

PLANNING COMMISSION AGENDA
CITY OF NEWPORT BEACH
COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD
Thursday, December 8, 2011
Regular Meeting – 6:30 p.m.

MICHAEL TOERGE
Vice Chair

BRADLEY HILLGREN
Secretary

ROBERT HAWKINS
FRED AMERI
KORY KRAMER
JAY MYERS

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney TONY BRINE, City Traffic Engineer

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200. The agendas, minutes and staff reports are also available on the City's web site at: <http://www.newportbeachca.gov>.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

NEWPORT BEACH PLANNING COMMISSION AGENDA
Council Chambers – 3300 Newport Boulevard
Thursday, December 8, 2011
REGULAR MEETING
6:30 p.m.

- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. ELECTION OF OFFICERS**
- E. PUBLIC COMMENTS**

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.

- F. REQUEST FOR CONTINUANCES**
- G. CONSENT ITEMS**

ITEM NO. 1 Minutes of November 3, 2011, Study Session

ACTION: Approve and file.

ITEM NO. 2 Minutes of November 17, 2011

ACTION: Approve and file.

H. PUBLIC HEARING ITEMS

ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE (3) MINUTES ON ALL ITEMS. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours.

ITEM NO. 3 Dr. Morgan Property Amendments (PA2011-138)
1419 Superior Avenue

SUMMARY: Amendments to the General Plan and Zoning Map to change the land use designation from Multiple Unit Residential (RM 18 DU/AC) to Medical Commercial Office (CO-M 0.49 FAR); and change the zoning district designation from Multiple Unit Residential (RM 2420) to Office Medical (OM 0.49 FAR). The amendments were initiated by the property owner who seeks to continue the existing office use of the property. The property is currently developed with a medical office building. No new land uses or development is proposed at this time.

CEQA COMPLIANCE: The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will bring the General Plan Land Use and Zoning District designations into consistency with the present use. The sites are presently developed and no new development is proposed at this time, which is categorically exempt under Section

15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).

- ACTION:**
- 1) Conduct a public hearing; and
 - 2) Adopt Resolution No. ____ recommending the City Council:
 - Approve General Plan Amendment No. GP2011-007; and
 - Approve Code Amendment No. CA2011-010.

ITEM NO. 4 Presta Property Amendments (PA2011-179)
2888 & 2890 Bay Shore Drive

SUMMARY: Amendments to the General Plan, Coastal Land Use Plan, and Zoning Map to change the land use designations of the two subject properties. The northern parcel will change from Multi-Unit Residential (RM) to Mixed-Use Water (MU-W) related to maintain the existing commercial use. The southern parcel will remain designated for Multi-Unit Residential (RM) development, but the density requirement will be modified to reflect the existing development (RM,39du).

CEQA COMPLIANCE: The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will make the General Plan land use, Coastal Land Use Plan, and Zoning District designations consistent with the present use of the subject property. The site is presently developed and no development is proposed at this time, which is exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).

- ACTION:**
- 1) Conduct a public hearing; and
 - 2) Adopt Resolution No. ____ recommending the City Council:
 - Approve General Plan Amendment No. GP2011-008;
 - Approve Local Coastal Plan Amendment No. LC2011-004; and
 - Approve Code Amendment No. CA2011-011.

I. NEW BUSINESS

J. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 Community Development Director's report.

- 1) Confirmation of Newport Beach Banning Ranch Study Session dates.

ITEM NO. 6 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

ITEM NO. 7 Request for excused absences.

ADJOURNMENT

HARBOR RIDGE ESTATES MAINTENANCE ASSOCIATION

November 22, 2011

Fred Ameri
Planning Commissioner
City of Newport Beach
P.O. Box 1768
Newport Beach, CA 92658-8915

Correspondence
Item No. 0.1
Public Comments



RE: Harbor Ridge Maintenance Association

Dear Mr. Ameri:

For many years we have been communicating with John Conway, Urban Forester, for the City of Newport Beach about a problem we have with some tall Eucalyptus trees. These trees are located on Port Durness Place and are blocking the views of homeowners who live on Monaco and St. Tropez.

Every year these trees grow several feet higher and some of the trees are now over 60 feet high. Our landscape company tells us this type of tree will grow to be 100 feet. These trees have already obstructed the view from many of our homes and soon we will have no view.

We are requesting that these Eucalyptus trees be removed. The trees are located from Port Harwick and wind around to the end of Port Durness.

Approximately 9 years ago, the homeowner association below us planted smaller Tristania trees between the Eucalyptus trees in this affected area, anticipating the removal of the Eucalyptus trees. The Tristanias were allowed to establish themselves and flourish and can now fill the space of the removed Eucalyptus trees.

We would also like to point out that Port Durness Place is a single loaded street. One side of the street is a greenbelt and this area is maintained by Harbor Ridge.

This problem is very serious for the homeowners since their views have a great impact on the value of the homes. We hope the city will have these trees removed.

Cc Steve Badum
Public Works Director

If you have any further questions or concerns please don't hesitate to contact me at (949) 448-6008 or by email dgaly@metitpm.com.

Sincerely,

David Galy
Community Manager
Merit Property Management

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, November 3, 2011
STUDY SESSION MEETING
4:30 p.m.

A. ROLL CALL

PRESENT: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth
ABSENT (EXCUSED): None.

Staff Present: Kimberly Brandt, Community Development Director; Patrick Alford, Planning Manager; Leonie Mulvihill, Assistant City Attorney; and Marlene Burns, Administrative Assistant

B. CURRENT BUSINESS

ITEM NO. 1 Newport Banning Ranch Environmental Impact Report

Chair Unsworth welcomed attendees and reported that the primary purpose of the study session is to educate the Commission on the Banning Ranch Project and the California Environmental Quality Act (CEQA) documents including the draft Environmental Impact Report (EIR) that has been prepared in conjunction with the approval. He added that after a staff report, the applicant will make a presentation, and then the public will have an opportunity to provide comments. He pointed out that the draft EIR has been distributed as required by law and is available throughout the public comment period which will close November 8, 2011. He noted strict enforcement of time limits and stated that the most helpful comments for the Commission will be focused on the EIR document, itself, and not the project. No action will be taken by the Planning Commission during the study session, but rather during a subsequent regular meeting.

Planning Manager Patrick Alford presented an overview of the application addressing the project site and elements of the application including the General Plan Amendment, Pre-zoning/Zone Change, Planned Community Development Plan, Master Development Plan, Tentative Tract Map, an Affordable Housing Implementation Plan, a Pre-annexation Development Agreement, and the Environmental Impact Report. Mr. Alford reviewed each element in detail. Regarding the Planned Community Development Plan, Mr. Alford reported that it establishes land use regulations, property development regulations, and the administrative process. It calls for the development of 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, 75,000 square feet of commercial uses, and approximately 51.4 acres of parklands. Approximately 252.3 acres would be retained in permanent open space. The Project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned and remediated for development and/or open space.

Mr. Alford reported that the Master Development Plan provides another level of detail and if approved by the City, it will be reviewed by the Coastal Commission as a Master Coastal Development Permit. He reviewed the various components of the Master Development Plan including land use and development plans, a master plan for trails and public access system, master landscaping plans, architectural guidelines as well as others. Mr. Alford reported the Tentative Tract Map will establish lot configurations, roadways, major infrastructure, easements, dedications, and drainage and water quality improvements. He reviewed the basic components of the Affordable Housing Implementation Plan as well as the Pre-annexation and Development Agreement.

The EIR examines the potential impacts generated by the proposed Project in relation to the following CEQA Checklist categories: aesthetics and visual resources, land use and planning programs, geology and soils, hydrology and water quality, population, housing, employment, transportation and circulation, air quality, green house gas emissions, noise, biological resources, cultural and paleontological resources, recreation and trails, hazards and hazardous materials, public services, utilities, and alternatives. He addressed the

timeline, the previous meetings in which the proposed project was reviewed, the current public review period, and the availability of the EIR document.

Chair Unsworth invited the applicant to address the Commission.

Mike Mohler, Newport Banning Ranch, LLC, introduced partner George Basye and deferred to him for a report.

Mr. Basye presented an overview of the property and reported that the surface and mineral estates are separate and distinct noting that the oil operator is a different group. He presented a brief history of the General Plan process for the property, including allowable uses and densities as well as preferred options for future uses for the site. He noted that the proposal provides for a mixed-use development plan and that it exceeds the open space requirements and is within the allowable intensities. He addressed existing conditions including the complicated network of oil-field roads and pipelines, and oil operations. Mr. Basye noted that one of the agreements, which has been negotiated, provides for their ability to force a consolidation of the oil operations.

Mr. Mohler reviewed the major features of the project including the open space, park lands, and oil consolidation areas. He stated that development is proposed on less than twenty-five (25%) percent of the property. He addressed the Comprehensive Habitat Preservation and Restoration Program provided in the draft EIR, a water-treatment plan, land stewardship, parks and trails, and pedestrian and bicycle bridges. Mr. Mohler reviewed roadways including primary access points and noted that they are consistent with the City's circulation plan. He addressed the villages, densities and the planned resort, as well as community interface, setbacks and edge conditions. He reported on the various costs and stressed that there would be no cost to the public.

Commissioner Hawkins asked regarding a third-party mitigation bank and the conditions to the third-party taking an interest.

Mr. Mohler responded that the property would be cleaned of oil and fully remediated and be a "canvass."

In response to an inquiry from Chair Unsworth, Mr. Basye stated leading agencies responsible for cleaning up the oil fields would be either the Orange County Healthcare Agency or the Water Board. The State Department of Oil and Gas and Geothermal Resources will be involved in managing, inspecting and signing off on oil well abandonments.

Commissioner Hawkins expressed concerns regarding discrepancies in existing condition service levels assigned to Superior and Coast Highway in the EIR and the traffic study.

Chair Unsworth opened the public comments section of the meeting. He invited Steve Ray, the spokesperson for the Banning Ranch Conservancy, to come forward, and noted his request to speak for fifteen (15) minutes as other speakers had yielded their time to Mr. Ray. The speakers who donated their time to Mr. Ray were: Dan Purcell, Deborah Lawson-Sisker, and John Sisker.

C. PUBLIC COMMENTS

Steve Ray, Executive Director of the Banning Ranch Conservancy thanked the Commission for the opportunity to speak. He reported that not all comments would be presented to the Commission this evening, but would be presented before the close of the public comment period. He reported that Banning Ranch is the largest parcel of unprotected coastal open space remaining in Southern California and explained that in spite of the oil operations, nature has thrived. He noted that it contains all of the elements to support it as an on-going ecosystem and addressed interdependencies of the system to survive. He expressed concerns that the proposed development would interfere with those interdependencies. He stated that there is valuable wildlife on the property, including coastal sage habitats.

Mr. Ray presented a short history of the Conservancy as well as its mission statement and noted the importance of the preservation, acquisition, conservation and management of the entire Banning Ranch as permanent public open space/park and coastal nature preserve. He referenced the 2006 General Plan Amendment noting that the priority preference, as passed by voters, was that Banning Ranch be maintained permanently as an open space and park. He stated that the group is carrying out the will of the voters and is also trying to acquire it at fair market value, conserve it, and restore it to its full, natural health as well as maintaining it as a coastal nature preserve and park. He reported that the group is attempting funding through Measure M and addressed other funding sources. He opined that there is no room for nature where the proposed development is going to occur.

Mr. Ray reported the identification of fifty-five (55) potential vernal pool wetlands on site, which the EIR fails to recognize and referenced some areas where critical habitats exist. In addition, he reported actions the group would take to improve the area.

In response to an inquiry from Commissioner Myers, Mr. Ray addressed the ecosystems that would disappear with the proposed development as well as most of the vernal pools.

In response to comments by Commissioner Ameri regarding vernal pools, Mr. Ray reported they are ephemeral water bodies, formed during the rainy season.

Community Development Director Brandt clarified that the purpose of the study session was to hear comments and questions from the public and that the Commission may direct any comments and questions to staff.

Vice Chair Toerge commented regarding the 2006 General Plan Amendment providing a reasonable amount of time for interested parties to negotiate to buy the property.

Mr. Ray noted that without the cooperation of the owners, it makes it difficult to begin negotiations.

Vice Chair Toerge inquired as to whether an offer has been made and Mr. Ray stated that no formal offer has been made because of problems accessing the property.

Jim Mosher noted that the project is not being considered at this time, but rather the EIR. He expressed concerns regarding the amount of money spent by the City; listed basic guidelines set by the State regarding the EIR process, and opined that the present EIR has not been prepared in accordance to CEQA requirements relative to its size. He further opined that if such a large document is needed, the project must be bad for the environment.

Ron Frankiewicz expressed concerns regarding traffic and noise impacts in addition to excess air pollution, and hazardous materials associated with the project. He declared his opposition to the project.

James Quigg expressed concerns regarding the extreme costs of cleaning up as well as the threat of tsunamis, which have not been addressed.

Chair Unsworth invited the applicant to address the Commission.

Mr. Mohler stated his intent to address every question raised, and to back up every commitment made. He expressed a desire to strike a balance with everyone concerned.

Chair Unsworth inquired as to the percentage of open space versus the proposed development.

Mr. Mohler responded that approximately seventy-five (75%) percent will remain open space and addressed the amount of off-site costs for clean up.

Commissioner Hillgren expressed concern regarding the size of the document.

Mr. Mohler opined that a thorough document does not necessarily constitute a bad project.

Commissioner Myers stated that the third-party restoration issue needs to be explained further in the EIR.

Chair Unsworth suggested clarification of traffic depictions on Pacific Coast Highway.

D. ADJOURNMENT – 5:42 p.m.

DRAFT

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, November 17, 2011
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Commissioner Hillgren

Vice Chair Toerge announced that Chairman Charles Unsworth resigned from the Planning Commission. Vice Chair Toerge recognized and appreciated Chair Unsworth's service to the Planning Commission.

C. ROLL CALL

PRESENT: Ameri, Hawkins, Hillgren, Myers, Toerge, and Kramer
ABSENT (EXCUSED): None.

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; James Campbell, Principal Planner; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Rosalinh Ung, Associate Planner; and Marlene Burns, Administrative Assistant

D. PUBLIC COMMENTS

Vice Chair Toerge invited comments from those in the audience who wished to address the Commission on other than Agenda items. There was no response and the Public Comments portion of the meeting was closed.

E. REQUEST FOR CONTINUANCES – None.

F. CONSENT ITEMS

ITEM NO. 1 Minutes of November 3, 2011

Motion made by Commissioner Hawkins and seconded by Commissioner Hillgren, and carried (5 – 0) with Commissioner Kramer, abstaining, to approve the minutes, as corrected.

AYES: Ameri, Hawkins, Hillgren, Myers, and Toerge
NOES: None.
ABSENT(RECUSED): None.
ABSTAIN: Kramer

G. PUBLIC HEARING ITEMS

Commissioner Myers recused himself from hearing Items No. 2 and 3 due to an economic interest in Golf Realty Fund and departed the dais and the Chambers.

Community Development Brandt reported this is the third public hearing on the Newport Beach Country Club applications, noting that this is an unusual circumstance in that there are two (2) applications

covering at least a portion of the property being reviewed. She provided an overview of both projects through a PowerPoint presentation noting that the first application, Item No. 2, encompasses the entire 145-acre property and that the second application, Item No. 3, encompasses only the 133-acre golf club portion of the property. She discussed the General Plan designations involved.

In response to an inquiry from Vice Chair Toerge, Ms. Brandt reported that because there are two (2) overlapping applications as they relate to the golf club house and parking lot, the Planning Commission will be unable to recommend approval of both applications to the City Council as they would be in conflict with one another. She added that the presence of a development agreement for both applications is not what would deem the inability of the Planning Commission to recommend approval of both applications, but rather the area related to the golf club house and the related parking lot. She added for the first application, that staff is recommending that the club house and related parking lot be "white holed" and that approvals go forward on the tennis club part of the property. Ms. Brandt reported that the Planning Commission has the option of filling in that "white hole" with the proposal requested with the second application, if so desired.

Ms. Brandt further explained that the development agreements would apply to each applicant since the development agreement would relate to the first application would be limited to the 12-acre tennis club property if the Commission takes staff's recommendation. The development agreement to the second application would be applicable to the larger 133-acre golf club portion of the property and would not be in conflict with one another.

Regarding the documents, Ms. Brandt reported that necessary adjustments would be made to the development agreements to reflect the entitlements once they are acted upon by the City Council.

Commissioner Hawkins commented on the development agreement for Golf Realty noting there is almost 20,000 square feet that has no benefit fee attached to it and asked for clarification.

Staff reported that the terms of the Golf Realty development agreement refer to the additional construction and related public benefit, once the hotel units are built, the City would be in a position to receive transient occupancy tax. There is no associated per square footage fee included as additional terms of the development agreement. That was a subject of negotiation between the City Council ad-hoc committee and the applicant.

ITEM NO. 2 Newport Beach Country Club (PA2005-140)
1600 & 1602 East Coast Highway

Principal Planner James Campbell presented details of the project and referenced the preparation of a Mitigated Negative Declaration noting there are no significant impacts that could not be mitigated. He added there are several mitigation measures included in the packet and noted key areas of discussion including land use, traffic, aesthetics, recreational impacts and architectural style. Mr. Campbell stated staff recommends adoption of the Mitigated Negative Declaration.

Mr. Campbell reported the planned community development plan encompasses 145 acres, 133-acre golf course, club house and ancillary maintenance facilities, 12-acre tennis club, tennis club house and supports twenty-seven (27) hotel rooms, ancillary spa and meeting rooms, and five (5) single-family homes. He noted that the draft text, which staff has prepared, provides for use and development standards and is a fairly flexible document without any prescribed architectural themes. He referenced a draft document prepared by the applicant, which is extremely specific, but added that staff is recommending adoption of the text prepared by staff. He added that the specifics the applicant is seeking would be accounted for within the site development permit.

Mr. Campbell addressed transfer of development and referenced a letter by Host Hotels and Resorts indicating possible solution to eliminate the need to do a development intensity transfer relating to converting the eliminated tennis courts into hotel rooms. He noted that staff has found nothing in the records indicating that Host has a vested right to build those hotel rooms and staff does not believe that the elimination of the tennis courts and converting them to floor area to accommodate hotel units is inconsistent with the General Plan. He added that the General Plan provides a specific development intensity limit of 3,725 square feet for the project site and what Host suggests is taking an area and creating a building mass that was not intended. The General Plan does provide for transfer of development intensity and Mr. Campbell reported the applicant has applied for that consideration. The other alternative would be for a General Plan amendment.

Commissioner Hillgren commented that it would be beneficial to all parties if it could be determined how that could occur; taking rights that are not vested today from another site and vesting them on the property through the development agreement and a vested tentative map.

Mr. Campbell responded that if a transfer is approved, it would vest through the development agreement to the project site. He indicated that staff does not believe Marriott (Host Hotels and Resort) has a vested right and that the General Plan indicates 611 rooms as a maximum number of rooms.

Commissioner Hillgren referenced the General Plan relative to the development intensity limit of 3,725 square feet, noting the assumption that there is an existing development in place, which happens to be tennis courts. He also referenced the analysis noting that from a traffic point of view, it is better to proceed with the proposed development than having the current use. He inquired as to contradictions of proceeding with the proposed.

Community Development Director Brandt reported that the General Plan sets specific thresholds in the land use element when considering any type of development proposal. She reported that it is a multi-pronged test, not limited to only one criterion. Ms. Brandt reported that the criteria includes traffic generation, floor-area ratio for non-residential buildings specifying the maximum limit for a particular area, or land-use designation in order to help define intended use, bulk and scale. She added that floor-area ratio for non-residential development works in concert with trip budget in order to keep with the anticipated bulk and scale for an area but also not impacting the circulation system or the transportation element of the General Plan. There are instances where you can have land uses that do not have floor-area ratio assigned to them but have a corresponding trip budget. Ms. Brandt indicated that this is the case for the tennis courts.

Ms. Brandt continued reporting that in the case of a conversion within the anomaly; a site-specific land-use designation, with the conversion proposal, Host asks to look at that anomaly only and to convert the use that generates trips but does not have floor-area ratio or building intensity assigned to it and convert that into a building. She explained that one of the intents of floor-area ratio is to help regulate bulk, scale, and massing.

Continuing to respond to inquiries by Commissioner Hillgren, Ms. Brandt reported that the transfer of use can be accomplished within the context of what the General Plan has established. She noted that the specific anomaly area must be considered as well as the larger statistical area for Newport Center Fashion Island (L1). The General Plan has established an over-arching trip budget for the entire statistical area as well as overall development potential comprised of residential and non-residential development potential. The General Plan, by policy, specifically allows the development potential and trip budget can be transferred throughout the statistical area providing that traffic impacts remain neutral, does not create a negative effect nor additional floor-area ratio or unit. In the analysis of the bulk and scale for the area, staff does not find it inappropriate for the location, given the transfer allowance by the General Plan.

Discussion ensued regarding whether or not the conversion could be accomplished. Commissioner Hillgren expressed a belief that it might be consistent with the General Plan, while Vice Chair Toerge noted that the project could be done with a General Plan amendment, which is not, however, the subject of the present hearing.

Vice Chair Toerge explained that Host is not the applicant, but rather Golf Realty is and they are choosing to pursue an avenue supported by staff. If the Planning Commission would desire, it could make the findings necessary to expand the floor-area ratio but, that would need to be accomplished through a General Plan amendment.

Ms. Brandt noted that under Item No. 3 the applicant is requesting expansion of the club house for the anomaly area; therefore, a General Plan amendment has been filed.

Commissioner Ameri inquired regarding the positives and negatives of the intensity conversion, noting the most important issue is traffic and by eliminating the tennis courts and replacing it with floor-area, there is no increase or decrease of traffic. He questioned if there would be a negative impact by adding floor-area.

Mr. Campbell explained that the development intensity for entire statistical area could not be exceeded so if a use conversion were to be granted, then Marriott could build additional rooms at a future date and the statistical area would then be exceeded. With the proposed transfer, the entire statistical area would not be developed beyond what the General Plan would allow.

Commissioner Ameri wondered if the Planning Commission has the authority to proceed with the intensity conversion without a General Plan amendment.

Vice Chair Toerge noted that the avenue being proposed by Host is not the appropriate mechanism that the Planning Commission has the authority to engage in a General Plan amendment, should that application be submitted, but that currently it is not under consideration.

Commissioner Kramer indicated that he would be in favor of a conversion because it would be the best route for the applicant, Host, and the City, because of the economic benefit. He questioned whether the only route to a solution would be a General Plan amendment and opined that the Commission has the discretion to make the conversion adding that care needs to be taken regarding limiting the scope of the Commission's authority.

Commissioner Hawkins referenced an earlier hearing wherein the Irvine Company transferred hotel rooms to an office building and that these hotel rooms were lost under the General Plan. He stated that the General Plan also encourages the development of hotel rooms and questioned the need for a General Plan amendment.

Vice Chair Toerge expressed concerns with the interpretation and whether other locales within the City could later use it against the City. He proposed that if the Commission were to support a General Plan amendment, the applicant may be compelled to return with an appropriate application and the problem would be resolved accordingly.

Mr. Campbell addressed a comparison site plan submitted by the applicant to illustrate that a larger club house, as proposed under Item No. 3, may theoretically work with the applicant's parking lot plan. He reported the draft development agreement has a ten (10) year term and conveys a vested right to develop the components discussed and listed the public benefits contained within the document. He listed the recommendation as the adoption of a resolution recommending to the City Council the: Adoption of Mitigated Negative Declaration No. ND2010-008, with an Errata to

Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program; Approval of Planned Community Development Plan No. PC2005-002, as proposed by staff, for the entire 145-acre project site; Transfer of Development Rights No. TD2010-003 as proposed by the applicant; Approval of Site Development Permit No. SD2011-002 and Limited Term Permit No. XP2011-004, as proposed by the applicant, for the improvements to the 12-acre tennis club portion of the project site reserving for future consideration the identification of improvements to the 133-acre golf course portion of the project site; Approval of Vesting Tentative Tract Map No. NT2005-003 as proposed by the applicant; and Approval of Development Agreement No. DA2008-001.

In response to an inquiry from Vice Chair Toerge, Mr. Campbell reported the vesting tentative tract map is isolated to the 12-acre parcel and does not include the entry driveway, the frontage road, the landscaping on Coast Highway, the parking lot, the design for the golf club nor the club house. He added that staff's recommendation is to address those items with the second application.

Staff responded to an inquiry from Vice Chair Toerge regarding the determination of the public benefit fees, noting that it was the subject of negotiations between representatives from the City Council and the applicant and stated that offsets for the demolition is based on new construction and addressed how the funds are used.

Commissioner Hawkins commented on the loss of seventeen (17) tennis courts. He disagreed with the environmental document claim that there is no impact and questioned if a public benefit would include the addition of tennis courts in public parks. In response to his inquiry, staff noted that the development agreement requires the payment of fees that could be used at the City Council's discretion.

Vice Chair Toerge invited the applicant to provide a presentation.

Robert OHill, Manager Owner of the Newport Beach Country Club, expressed agreement with staff's revised planned community district text and most of the site development plan recommendations, but disagreed with the approval of the site development permit limiting it to just the twelve (12) acres. He provided a PowerPoint presentation addressing the proposed entry way to the project, and reported the proposed project reduces traffic, brings substantial revenue to the City, preserves the tennis club, adds a new tennis club house as well as a stadium court, addresses the aesthetic issues along Coast Highway, and provides a landscape buffer to Irvine Terrace residents. He listed the reasons for the importance of the project.

Mr. OHill opined that IBC's proposed club house parking lot; Item No. 3, does not work functionally and addressed the grade difference and the inability of golf carts getting to it. He stated that the application is slightly different than the original proposal noting an addition to the number of parking stalls in response to IBC's desire to have 334 parking stalls for their larger clubhouse, 34 more than the original proposal and 90 parking stalls more than what the parking study stated was needed. He addressed access to additional parking through a non-exclusive easement at Corporate Plaza West, the aesthetics of 700 feet along Coast Highway would be improved, and preserve the open space views along Coast Highway. He reported the building footprint approximately mirrors the existing club house but noted it is two stories high.

Mr. OHill presented a comparison between the IBC proposal and his NBCC master plan developed long ago, the proposed application. He stated that their Item No. 3, proposed expansion of the club house would eliminate much of the open space views and he addressed the grade separation. He reported their effort to make sure the grading of the tennis club and the golf club sites balance and took into consideration crushing the tennis court concrete and reusing it to avoid traffic congestion and dust from trucks during construction. Mr. OHill requested the site development plan approved as submitted but indicated understanding the concept of the "white hole" so that the IBC club house

or master plan club house could be built in the future. He stressed his parking lot plan works with many of the elements requested and proposed by IBC.

Commissioner Hawkins inquired regarding the nature of the controversy.

Mr. OHill stated that their concerns involve the parking lot, the General Plan amendment and the architecture of the golf club house that IBC, Item No. 3, is proposing. He added his "white hole" concept is a compromise but he objects to approving the project with just the twelve (12) acres. He stated their preference would be for the Commission to approve the project with the entire land owned.

Commissioner Hillgren inquired regarding the differences in the two (2) proposed parking lots and landscaping.

Mr. OHill reported that his plan was not designed to hide cars, but to hide asphalt and create a more aesthetic parking lot. He also addressed fill issues and in response to Commissioner Hillgren's inquiry affirmed support of a General Plan amendment by Marriott. He referenced previous General Plan amendments and indicated that he would not like to go through another.

Commissioner Hillgren noted that no Irvine Terrace residents have appeared before the Commission regarding the item.

Mr. OHill reported spending a lot of time speaking with all the stake holders in an attempt to understand their needs but indicated that residents of Irvine Terrace have not been notified. Depending on the outcome, Mr. OHill stated they may need to be.

Paul Singarella of Latham & Watkins spoke on behalf of Host Hotels and Resorts, stressed the importance of the hotel units and introduced his colleagues. He expressed appreciation for staff's help but stated disappointment with the fact that staff does not believe that the use conversion is consistent with the General Plan. He noted that reasonable minds can differ and stated that the law makes it clear that it is in the elected officials' and their designee's discretion to choose which interpretation of a General Plan to adopt. He opined that use conversion is a decision for the legislative body.

Mr. Singarella reiterated staff's position that if the use conversion approach is used rather than the transfer approach, the development potential of statistical area L1 would be exceeded. He asserted that staff's position is such due to an assumption about the tennis courts; however, in the staff report, staff acknowledges that the tennis courts are part of the development potential intensity for Anomaly 46. He agreed with staff in that categorization but disagreed over the implications of that fact. He stated that the only way a use conversion would exceed the overall development intensity of L1 is by giving zero development value to the tennis courts. He added that one cannot determine the tennis courts are part of the maximum development intensity while at the same time discount their value when it comes to use conversion. Mr. Singarella asserted that the City's use conversion law does not discriminate one non-residential use from another. He reported there is no limit on hotel units on the statistical area and questioned the assignment of zero development value to the tennis courts.

Mr. Singarella stated the belief that the use conversion can be done without a General Plan amendment and addressed setting precedence. Regarding the latter, he indicated this is a decision for the legislative body and therefore, there is no risk of setting precedence. He added that these are the only tennis courts in town with an assigned maximum development intensity which distinguishes them from any other in the City. He restated his request that the Commission find the use conversion approach to be consistent with the General Plan and recommend the same.

Commissioner Hawkins commented that if in fact, the hotel units are vested to Host, the Commission has no discretion at this time. He stated if Golf Realty is to obtain the hotel units, it could not be through a conversion, but rather through a transfer.

Mike Recupero, Attorney representing half of the ownership of the subject property, referenced comments submitted in writing and reported that his clients do not agree with the development agreement and have not had an opportunity to participate in discussions on the subject. Regarding the planned community text, he inquired about the possibility of amending it at a later time at staff's discretion based on a pending legal hearing that will decide the relative rights of the ownership. He requested the Commission remove the sections relating to the golf course in its entirety.

Commissioner Hawkins reported speaking with Host and Mr. Recupero regarding the frontage access easement and referenced a termination of access and grant deeds given to both of his clients. However, he stated the grant deeds occurred before the termination which could affect those.

Mr. Recupero felt the termination is specific to the documents that it affects. He agreed it could affect them if it is so interpreted, but he stated that is not how it was written. He agreed there is a title issue. But, he pointed out that the state of the record and what is recorded are separate easements that by the plain language of the termination are not affected by it.

Shawna Schaffner of CAA Planning, indicated the comparison plan submitted by Golf Realty does not work for NBCC, applicant for Item No. 3. Mainly, she stated it is due to operational reasons. The NBCC golf club house and parking lot is a coordinated and integrated plan. She reiterated previous comments noting objection to a club house on a property with a long-term lease, the location of the bungalows and the hardscape improvements over the lease hold land.

Tim Paone, on behalf of Golf Realty, addressed the Commission noting the desire for the use conversion to work. Regarding previous comments made by Mr. Singarella relative to interpretation of the General Plan, he stated that there is discretion, but it must be exercised consistently and cannot be directly contrary to what the General Plan specifies. He expressed concern with issues relative to the removal of the tennis courts, new hotel units and trips generated. He indicated that there is no record that the Marriott units are vested and felt the most important word in the process is appurtenant (runs with the land), not personal to the person who has it. He stated easement rights went with the property.

Vice Chair Toerge closed the public hearing.

Community Development Director Brandt responded to Mr. Recupero's suggestion noting that if the Planning Commission were to proceed with the planned community text or zoning regulations for Golf Realty, that a provision be added to the zoning text that would allow an amendment to be implemented by the Community Development Director or staff. She noted the zoning code is legislative and can only be amended by the City Council.

Commissioner Hillgren commented on the encroachment of patios over the parcel lines.

Vice Chair Toerge opened the public hearing.

Mr. OHill responded noting his architect chose to create a bubble in spots. He reported the project can be built with or without the patio encroaching into the lease hold interest. In addition, he reported the proposed entry way does not follow the existing entry way and eliminates one of the bungalows.

Vice Chair Toerge closed the public hearing. He commented on the complexity of the issues and expressed disappointment at the applicants' inability to come to mutually acceptable agreements.

Commissioner Ameri expressed disappointment at the lack of progress being made.

Commissioner Hillgren felt that there was a possibility of a conversion and referenced the General Plan Land Use Element (3-18 and 3-19) which lists all of the various anomaly locations, land use designations, development limits and types of developments. Relative to Anomaly 43, it has no designated square footage. Therefore, density cannot be determined. Regarding Anomaly 46, it exceeds 3725 square feet as well as a significant amount with the proposed bungalows, which is being determined to be acceptable because traffic is well below existing.

Ms. Brandt reported that with various anomalies within statistical area L1, the General Plan allows transferring to occur within the anomalies areas and conversion of non-residential through other non-residential and specific square footages for hotel rooms when not assigned.

Commissioner Hillgren noted it also lists twenty-four (24) tennis courts as specific development types, which have an associated intensity. He felt that if it is deemed a development type then it can be converted to another non-residential commercial use.

Ms. Brandt responded stating that there are many types of uses that generate trips that do not have square footages assigned to them. They have value, even without having a primary structure associated with it. She addressed various types of uses and noted they each have a value in and of themselves.

Ensuing discussion pertained to listed uses, possible development activities within the spaces, entitlements, and the ability to convert.

Vice Chair Toerge stated the Commission has been asked to review the Mitigated Negative Declaration, prior to reviewing any other entitlements. He directed Members to focus on the MND.

Commissioner Hawkins referenced the staff report from October 20, 2011, handwritten pages 105-106 regarding staff's response to Planning Commission comments. The conclusion is that there are no land use impacts yet, within the discussion of the parking lot design, compatibility of the architectural style, the size and locations of the golf club house, those impacts still remain. He wondered if the response is appropriate. Relative to the elimination of the tennis courts, he reiterated other's response that they are not community resources but rather membership resources and the seven (7) tennis courts that remain will serve for the tennis club members. He disagreed with the approach and stated he regards the twenty-four (24) courts as a recreational resource for the community. He felt that if there is a conversion that takes the tennis courts, they could not be mitigated because one would be creating double the amount of tennis courts. He opined the resource loss is still a significant impact even upon conversion. He recommended the Mitigated Negative Declaration needs to be revised, and that there be a mitigation measure proposed which would replace or reconstruct seventeen (17) tennis courts on City-owned property and that same is inserted into the development agreement.

Motion made by Commissioner Hawkins and seconded by Commissioner Ameri, to deny the Mitigated Negative Declaration.

Substitute Motion made by Vice Chair Toerge and seconded by Commissioner Hillgren, and carried (3 – 2) with one recusal (Myers) finding the Mitigated Negative Declaration to be adequate and recommend it for its approval.

AYES: Hillgren, Kramer, and Toerge
NOES: Ameri and Hawkins
ABSENT(RECUSED): Myers
ABSTAIN: None.

Motion made by Commissioner Hawkins and seconded by Commissioner Ameri to adopt a resolution recommending to the City Council approval of Planned Community Development Plan No. PC2005-002, as proposed by staff, for the entire 145-acre project site; without the Transfer of Development Rights No. TD2010-003 as proposed by the applicant; but, a Use Conversion of Tennis Courts to Hotel Rooms with the General Plan policies of encouraging hotel units; approval of Site Development Permit No. SD2011-002 and Limited Term Permit No. XP2011-004, for the improvements to the 12-acre tennis club portion of the project site reserving for future consideration the identification of improvements to the 133-acre golf course portion of the project site; approval of Vesting Tentative Tract Map No. NT2005-003 as proposed by the applicant; and approval of Development Agreement No. DA2008-001.

In response to Commissioner Hillgren's inquiry regarding the patio encroachment and how that would be resolved, Ms. Brandt stated that it is a minor issue and that it could be resolved through the plan check process.

Ms. Brandt suggested a recess to allow staff some time to modify the findings within the draft resolution to reflect the proposed motion.

The Planning Commission recessed at 8:15 p.m.

The assembly recessed and reconvened at 8:25 p.m. with all Commissioners present.

Commissioner Hawkins corrected his earlier comments regarding the response to comments on the land use impacts, loss of tennis courts, etc. stating that he was referencing the present staff report of November 17, 2011, rather than the October 20, 2011 staff report.

Ms. Brandt proposed modifications for the Commission to consider in regards to the motion. She referenced handwritten page 10 of the Staff Report subparagraph D and proposed it would read as follows, "In order to accommodate the development of the proposed 27-hotel unit development 'bungalows,' the seventeen (17) tennis courts shall be converted to 27 hotel units. The General Plan provides for additional retail opportunities at Fashion Island and hotel rooms and housing units in Newport Center. The proposed conversion does not require a General Plan amendment." On handwritten page 11, Ms. Brandt proposed the deletion of paragraph 2 (Transfer of Development Intensity), finding (A) and facts in support of finding (A-1). In addition, the deletion of handwritten page 12, finding (B) and facts in support of finding (B-1 and B-2). She noted no additional changes to the Resolution.

Commissioner Hawkins suggested changes including handwritten page 10, adding "the proposed conversion revitalizes an area wherein the General Plan encourages to have hotel rooms." Relative to page 12, finding (B), Commissioner Hawkins wanted to add "the conversion will not result in any adverse traffic impacts." He referenced Exhibit 4 of the staff report relative to traffic impacts of hotel units as opposed to tennis courts and suggested the addition of B-1 classifying the conversion as traffic neutral. He felt B-2 could remain.

Discussion followed regarding maintaining B-1 and B-2 as they presently read.

The maker of the motion, Commissioner Hawkins, and Commissioner Ameri agreed to the amendments and the motion carried (5 - 0) with one recusal (Myers).

AYES: Ameri, Hawkins, Hillgren, Kramer, and Toerge
NOES: None.
ABSENT(RECUSED): Myers
ABSTAIN: None.

ITEM NO. 3 Newport Beach Country Club (PA2008-152)
1600 East Coast Highway

Principal Planner Campbell presented details of the proposed project addressing the project site, including a larger club house associated with a General Plan amendment to increase the development allocation from 35,000 square feet to 56,000 square feet in Anomaly 74, a planned community development plan amendment, a prepared Mitigated Negative Declaration that principally addressed land use, traffic and aesthetics and he stated staff recommendations for approval. He referenced an alternative site plan providing for modified access easement area across the front of the property which maintains exit-only driveway access, proposed 15 feet of driveway with 18 feet of landscaping along Coast Highway that would hide the proposed fence, and parking lot. Staff expressed concern about the width of the driveway indicated their preference for it to be 20 feet wide. He noted this is the applicant's preferred plan noting it avoids circulation issues and it provides additional flexibility for special events. Mr. Campbell addressed conditions of approval relative to the frontage road. He specified Condition No. 7 regarding the design of the parking lot providing flexibility to address the issue at a later time. This will allow the flexibility to address the issue administratively before the issuance of a building permit. He highlighted the terms of the draft development agreement and stated staff recommendations including approval of a General Plan amendment.

Vice Chair Toerge confirmed that approval of the MND is included in the resolution which is presented.

Commissioner Hawkins expressed concerns about the access road.

Commissioner Ameri reported that legally, the easement can be there but it has been eliminated in the design.

David Wooten, Newport Beach Country Club, Incorporated, indicated support of staff recommendations and referenced refinements to the plan based on comments from staff and the Planning Commission. He deferred to CAA Planning staff Shawna Schaffner for a presentation.

Shawna Schaffner of CAA Planning, reviewed some of the changes made including widening of the entry driveway, the re-orientation of the porte-cochère, the perimeter fencing redesign and reduction in height, the reduction of the signage, the lowering of the pad elevations and the reduction of grading, the increase in setback to the parking lot landscape. She reported that the Irvine Terrace entry drive was widened and that significant landscaping was added. She noted that the amount of heavy truck traffic was reduced from twenty-seven (27) days to twenty-one (21) days for the grading operation. She stated that the frontage road and placement of the perimeter face were both issues warranting a closer look following the straw vote at the October 20, 2011, Planning Commission meeting. Ms. Schaffner noted that they have submitted two (2) plans, one with the frontage road and one without. In addition, she presented an updated site plan and noted the frontage road has been reduced to fifteen (15) feet and mentioned that they accept the 20-foot width.

In addition Ms. Schaffner addressed the increase of landscape setbacks, one-way traffic on the frontage road, separation of the berm and perimeter fence, and presented an updated rendering. She urged the Commission to approve the plan and advance the item to the City Council.

Ensuing discussion pertained to ways of enforcing one-way access on the frontage road through signage and a center median, landscaping on both sides of the fence, the possibility of making the frontage road entrance only rather than exit only and effects of traffic to and from Armstrong Nursery.

Ms. Schaffner noted that in working with the Traffic Engineering, they have adequately addressed the issue of safety on the frontage road.

Discussion followed regarding the number of turning movements needed from the frontage road and possible hairpin turns.

Commissioner Kramer inquired regarding other alternatives to vehicular traffic and asked to see the site plan without the frontage road. He expressed his support for a project design that did not include the frontage road, noting that there are other alternatives available.

Commissioner Hillgren agreed with the idea of a one-way frontage road, and felt it would be used by a limited number of people, and noted it functions reasonably as a one-way coming out of the nursery.

Vice Chair Toerge voiced his agreement.

Discussion followed regarding the addition of trees in the parking aisles between spaces.

Douglas Lee, Project Architect, indicated that two (2) strips of landscaping have been created through the parking lot and specified the location of trees on the site plan. He noted the importance of staging areas for big events. Mr. Lee reported the plans have been adjusted to ensure that there is no elimination of the bungalows proposed in the previous application.

Perry Dickey, President and COO of NBCC Country Club, reported the absence of trees in the center area of the lot was designed to accommodate the mobile homes and other vehicles during tournaments. He affirmed that golf carts would not be allowed in the parking area.

Ian Hydoski Vice President of Operations at Armstrong Garden Centers, spoke on the importance of the frontage road, noting about sixty (60%) percent of his customers use the frontage road to exit back to Pacific Coast Highway. He opined the reason is that they feel safer exiting at the stop light. He further indicated that if they lose that exit, customers will lose the convenience and will subsequently affect his business. He addressed the number of truck deliveries and stated that using the frontage road is much safer for them instead of pulling out of the driveway.

Vice Chair Toerge opened the public hearing.

Brian Horn commented on the parking lot and the staging area noting it facilitates the ability of the Toshiba Classic to generate upwards of \$30 million of economic impact to the Newport community. He expressed a house divided will never stand and a house united will never fall. He urged the Commission to approve the plan and move it forward.

Mike Recupero, Attorney representing half of the ownership of the subject property thanked the applicant for the changes made pursuant to the Commission's direction. He distributed a rendering of the area and noted it makes clear the drive aisle will never be appreciated by someone on Coast Highway. He explained that the owner and his clients are in agreement with the frontage road and

opined that there is no reason not to adopt the frontage road. He asked for consideration in allowing the frontage road.

Robert OHill commented on the Toshiba Tournament noting that their needs can be accommodated with the master plan parking lot, Item No. 2. He addressed termination of the frontage road noting that the easement no longer exists. He also opined the frontage road plan is an aesthetic eye sore and has created safety issues in the past.

Vice Chair Toerge closed the public hearing.

Vice Chair Toerge commented on the perimeter fence and frontage road and noted the input received is quite compelling. He commented positively on the changes made and stated that he no longer objected to the frontage road.

Commissioner Ameri expressed his past concern regarding the frontage road and stated that the improvement on the design is significant and that he no longer has concerns regarding the safety of the frontage road.

Commissioner Hawkins inquired regarding decreases in terms of dollars received from the subject development agreements.

Ms. Brandt reported the basis for the rate is based on discussions by the City Council ad-hoc subcommittee for development agreements which is also subject to City Council review and approval.

Vice Chair Toerge re-opened the public hearing.

Ms. Schaffner reported that negotiations were based on recent development agreements for which the City has received monies including the North Newport Center development agreement and the Hoag Hospital development agreement.

Vice Chair Toerge closed the public hearing.

Motion made by Commissioner Hawkins to deny adoption of the Mitigated Negative Declaration. The motion failed for lack of a second.

Commissioner Hillgren expressed concern that public use of the clubhouse as an event venue remain ancillary to the golf course. He also referred to a previous Planning staff report regarding the mention that the banquet assembly uses would be accessory and allowed by the General Plan as long as the public event venue use remains subordinate to the golf course. Commissioner Hillgren asked what subordinate would be in this case.

Mr. Campbell explained that the primary activity will be the golf course and the golf club house. He added that the operation of the golf house as a banquet venue absent the operation of the golf course could not occur. In addition, he stated that there are no conditions limiting use of the banquet venue, but that it would need to remain subordinate. The club has to regulate its own activity where it is conducive to their own operation.

Commissioner Hawkins referenced Condition No. 2, on handwritten page 23, and Mr. Campbell responded that it is there to provide clarity to the applicant that what is being approved is the site development application only for the golf course/clubhouse facility. Staff noted that the plans include the alternative driveway approach and access easement. Mr. Campbell noted that if the

Commission chooses to go with the access easement and frontage road, Condition No. 5 would need to be modified.

Motion made by Commissioner Hawkins to approve the General Plan Amendment, the Planned Community Development Plan Amendment, Site Development Review, Limited Term Permit and the Development Agreement, and the Mitigated Negative Declaration to be separate from this motion. The motion failed for lack of a second.

Motion made by Commissioner Hillgren and seconded by Commissioner Ameri, and carried (3 – 2) with one recusal (Myers) to approve as submitted by staff with the following modification to No. 5, Exhibit D, to read "the preferred parking lot design includes the 20-foot frontage road that provides one-way access from the entry driveway to the Armstrong Nursery property to the left of the project site." The motion includes adoption of a resolution recommending to the City Council the adoption of Mitigated Negative Declaration No. ND2010-010, including the Mitigation Monitoring and Report Program; approval of General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2005-002; and approval of Site Development Review No. SD2011-003, Limited Term Permit No. XP2011-005, and Development Agreement No. DA2010-005.

AYES: Ameri, Hillgren, and Toerge
NOES: Hawkins and Kramer
ABSENT(RECUSED): Myers
ABSTAIN: None.

H. NEW BUSINESS – None.

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 Community Development Director's report.

Community Development Director Brandt introduced the City's new Deputy Community Development Director Brenda Wisneski and briefly listed her background.

In addition, Ms. Brandt announced the Orange County Business Council has announced awards for this year's "Turning Red Tape into Red Carpet" for which the City of Newport Beach's Community Development Department was honored with a first runner-up award in the category of business retention and encouragement of businesses within the community.

ITEM NO. 5 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Commissioner Hawkins inquired regarding concerns from the City Council regarding Planning Commission appeals. Ms. Brandt reported the City Council has scheduled a study session to consider the issue which will take place on Tuesday, November 22, 2011. She also indicated outgoing Planning Chairman Unsworth would be recognized at the next regular meeting of the Planning Commission.

Commissioner Hawkins inquired regarding possible Christmas celebration. Vice Chair Toerge directed staff to consider the matter.

Commissioner Hawkins reported the Mayor's dinner will be on February 3, 2012, and he will be reserving a table.

ITEM NO. 6 Request for excused absences – None.

ADJOURNMENT – Planning Commission meeting adjourned at 9:32 p.m.

DRAFT

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
December 8, 2011 Hearing
Agenda Item 3

SUBJECT: Dr. Morgan Property Amendments (PA2011-138)
1419 Superior Avenue
▪ General Plan Amendment No. GP2011-007
▪ Code Amendment No. CA2011-010

APPLICANT: William Roy Morgan, M.D, F.A.C.S.

PLANNER: Kay Sims, Assistant Planner
(949) 644-3237 or KSims@newportbeachca.gov

PROJECT SUMMARY

Amendments to the General Plan and Zoning Map to change the land use designation from Multiple Unit Residential (RM 18 DU/AC) to Medical Commercial Office (CO-M 0.49 FAR); and change the zoning district designation from Multiple Unit Residential (RM 2420) to Office Medical (OM 0.49 FAR). The amendments were initiated by the property owner who seeks to continue the existing office use of the property. The property is currently developed with a medical office building. No new land uses or development is proposed at this time.

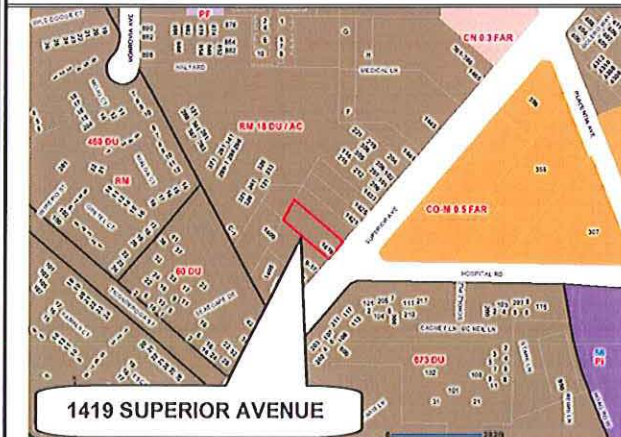
RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) and attached Exhibits recommending the City Council:
 - Approve General Plan Amendment No. GP2011-007; and
 - Approve Code Amendment No. CA2011-010.

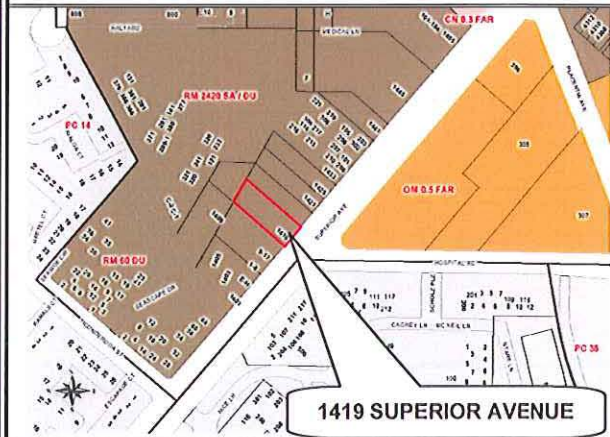
VICINITY MAP



GENERAL PLAN



ZONING



	EXISTING	PROPOSED
GENERAL PLAN	Multiple-Unit Residential (RM 18 DU/AC)	Medical Commercial Office (CO-M 0.49 FAR)
ZONING DISTRICT	Multiple-Unit Residential (RM 2420)	Office Medical (OM 0.49 FAR)

INTRODUCTION

Project Setting

The subject property is located in the West Newport Mesa area on the west side of Superior Avenue at the intersection of Hospital Road and Superior Avenue. Existing development on the west side of Superior Avenue, in this immediate area, consists of apartment complexes (Newport Terrace and The Beach House) and a multi-unit condominium building (not named). East of Superior Avenue and south of Hospital Road is a condominium complex (Versailles on the Bluff Planned Community, PC 10); north of Hospital Road is a medical office complex (Mariner's Medical Plaza). The Hoag Memorial Hospital complex (PC 38) is located adjacent to the east side of Versailles on the Bluff.

The subject property has a land area of approximately 13,650 square feet and is currently developed with an existing medical office building (approximately 6,590 square feet), which was constructed under Orange County jurisdiction in 1957. The building consists of the original one-story portion at the front of the site, and a two-story addition attached to the rear constructed in 1963. The intensity on the site is approximately 0.482 FAR. Current uses within the building include six medical and dental offices, a cosmetic surgery center, and a walk-in medical clinic, which is located at the front of the building. Vehicular access to the property is via a driveway off Superior Avenue along the northerly portion of front of the property. Approximately 33 parking spaces ($6,590/200 = 33$) are required for the existing uses on the subject site. Thirteen parking spaces are provided on the subject site and an additional 33 parking spaces are provided on the lots adjacent to the rear and northwesterly side of the subject property (46 total parking spaces). The lots are owned by the applicant, but are not a part of the application request. Due to the uses and number of parking spaces on the subject property, it is nonconforming with the existing General Plan (RM 18 DU/AC) and Zoning Code (RM 2420) designations and regulations.

Background

The West Newport Mesa area of the City, more specifically known as the County Triangle, was annexed to the City of Newport Beach October 7, 1979, pursuant to Resolution No. 9647. Portions of the annexation area were developed with multi-family residential units. With annexation into the City, the subject property became zoned R-3 (Restricted Multiple-Family Residential), and the medical office use became nonconforming. The R-3 zoning designation was changed to MFR (2178) pursuant to the adoption of City Council Ordinance No. 90-24, May 29, 1990.

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update"). At that time, the property retained a multi-residential land use designation.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. Determinations of nonconformity could not be made until finalization of the City's Local Coastal Plan (LCP) on July 14, 2008, and adoption of the update to the Zoning Code.

October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20), which brought consistency between the Zoning Code and the Land Use Element of the General Plan. The zoning designation of the subject property was changed from Multiple-Family Residential (MFR 2178) to Multi-Unit Residential (RM 2420), and it became subject to abatement in accordance with Ordinance No. 2008-05.

The City has sent letters to owners of all known non-residential uses in residential areas that became subject to abatement pursuant to Ordinance No. 2008-05. Staff has met and continues to meet with many of the owners of those properties. Staff has discussed with those owners the options available as a result of a property's nonconformity. Options may include conversion of use or development to a residential use; request for extension of the abatement period; or request to amend the General Plan and Zoning Code to allow the continuation of the existing uses. In this case, the owner of the subject property chose to pursue amendments to change the land use designation of the property from multi-unit residential to medical office use in order to retain the existing medical uses. The subject application does not include a specific project for development at this time, but any future development would be in accordance with the standards of the proposed zoning district.

DISCUSSION

Analysis

Amendments to the General Plan Land Use Plan and Zoning Code are legislative acts. Neither City nor State Planning Law sets forth specific required findings for approval or denial of such amendments. However, when making a recommendation to the City Council, the Planning Commission should consider applicable policies and development standards to ensure internal consistency.

General Plan

The subject property is located within the West Newport Mesa area of Newport Beach. In considering the proposed General Plan Amendment, the Planning Commission should consider the following statements, goals, and policies of the General Plan. The General Plan Land Use Element describes the West Newport Mesa as an area that:

"Contains a mix of residential, office, retail, industrial, and public uses. Development in the area dates back to the mid-twentieth century. Hoag Hospital is a major activity center that continues to affect development in the area. It generates a strong market for the development of uses that support the

hospital's medical activities such as doctors' offices, convalescent and care facilities, medical supply, pharmacy, and similar uses. Retail commercial uses serve medical purposes, as well as nearby residents."

Policy Overview

"The General Plan provides for a mix of land uses for West Newport Mesa that include office, research, convalescent care, and retail facilities supporting Hoag Hospital,..... While distinct sub-districts are defined by the Land Use Plan, the assembly and planning of multiple parcels across these districts to create a unified center that is linked by pedestrian walkways, parklands, and other amenities is encouraged."

Goal LU 6.6

"A medical district with peripheral medical services and research facilities that support the Hoag Hospital campus within a well-planned residential neighborhood, enabling residents to live close to their jobs and reducing commutes to outlying areas."

Policy LU 6.6.1 (Hospital Supporting Uses Integrated with Residential Neighborhoods)

"Prioritize the accommodation of medical-related and supporting facilities on properties abutting the Hoag Hospital complex [areas designated as "CO-M (0.5)"] with opportunities for new residential units [areas designated as "RM (18/AC)"] and supporting general and neighborhood-serving retail services ["CC (0.75)" and "CN (0.3)"] respectively."

Although the property is not located directly abutting the Hoag Hospital complex, it fronts on Superior Avenue at the intersection of Superior Avenue and Hospital Road. It provides a medical facility that is clearly visible and easily accessible from either street for residents of the area, the City, and visitors to the City's beaches. It is also located in the immediate area of the medical commercial office (CO-M) designated property located directly across Superior Avenue. In furtherance of the policies stated above, approval of the proposed amendments will allow the continuation of the existing medical office uses without being subject to abatement.

Policy LU 5.6.1 (Compatible Development)

"Require that buildings and properties be designed to ensure compatibility within and as interfaces between neighborhoods, districts, and corridors."

Staff believes that the current medical office building and uses on the subject property are compatible with the multi-unit residential uses and other medical uses in the neighboring area. The original building on the property was constructed as a medical office building in 1957, and the property has been in continuous use as a medical use facility since that time. The walk-in medical clinic has been operating since 1983. The facility's visibility and convenient access from Superior Avenue allows it to provide emergency and urgent care services for residents and visitors. Two of the building suites contain medical offices and a surgery center, which has been continuously occupied by the applicant for over 25 years. The medical/dental office services are similar to other

medical office uses located directly across Superior Avenue. The neighboring multi-unit residential uses on the west side of Superior Avenue are developed as three-story buildings with residential units constructed above either parking garages or carports. The subject medical office building is separated from the residential units either by the adjacent lots used for parking and/or by access drives from Superior Avenue. The multi-unit residential development to the east of the subject site is located across Superior Avenue, which is a four-lane, divided road. There is no history of land use incompatibility with these surrounding residential uses.

The proposed Medical-Commercial Office (CO-M 0.49 FAR) designation is intended to provide primarily for medical-related offices, other professional offices, retail, short-term convalescent and long-term care facilities, research labs, and similar uses, with a maximum floor area to land area ratio (FAR) of 0.49. The existing medical office gross floor area (6,590 square feet) on the property is consistent with the proposed 0.49 FAR (6,689 square feet) limitation allowed.

Zoning Code

The Office Medical (OM) Zoning District is intended to provide for areas appropriate primarily for medical-related offices, other professional offices, retail, short-term convalescent and long-term care facilities, research labs, and similar uses. The proposed OM 0.49 district would allow development of projects with a maximum floor area ratio (FAR) of 0.49. The proposed FAR would not require a vote of the electorate pursuant to Measure S (Charter Section 423) and is consistent with the square footage of the existing medical office development on the property.

The stated purpose and intent of the Zoning Code is to carry out the policies of the City of Newport Beach General Plan. Consistency between the General Plan and the Zoning Code Designation is critical to ensure orderly development and enforcement. Under the existing RM (2420) zoning designation, the subject property could be developed with a maximum of five dwelling units and would require a total of 13 parking spaces.

The main purpose of the requested amendment is to maintain the existing medical office use development. The total existing number of parking spaces provided on the subject property and the lots adjacent to the rear and the northeasterly side exceed the number of parking spaces required by the current zoning code for the medical uses on site. Any redevelopment of the adjacent lots would require that the subject site be redeveloped, since the required parking would no longer be provided. With regard to the subject property, the existing medical office development would be allowed without abatement. Future new development would require conformance with applicable Office-Medical (OM 0.49 FAR) Zoning District development and parking standards. Although the applicant is not proposing any new project on the subject property, approval of the amendments would allow other uses permitted within the Office-Medical (OM) Zoning District. General office and retail uses would be permitted by right, but more intensive uses would require discretionary approval, which would likely include conditions of approval.

Charter Section 423 (Measure S) Analysis

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed General Plan amendment (if approved) requires a vote by the electorate. The proposed amendment is analyzed with 80 percent of the increases in traffic, dwelling units and non-residential floor area created by previous general plan amendments (approved within the preceding ten years) within the same statistical area. The proposed amendment and the two most recent amendments previously approved within this statistical area are provided below in Table 1. The following thresholds are applicable: 100 dwelling units, 100 a.m. peak hour trips, 100 p.m. peak hour trips, or 40,000 square feet of non-residential floor area. If any of the thresholds are exceeded and the City Council approves the requested General Plan Amendment, the Amendment would be classified as a "major amendment" and be subject to voter consideration. Approved amendments, other than those approved by the electorate, are tracked for ten years and factored into the analysis of future amendments as indicated.

The subject project site is located within Statistical Area A2 of the General Plan Land Use Element, and would result in an increase of 6,689 square feet of non-residential floor area. Based on the trip generation rates contained in the Council Policy A-18 (Commercial rate), the proposed project is forecast to generate an additional 18 a.m. peak hour trips and 24 p.m. peak hour trips. The number of dwelling units would be reduced by five, resulting in no total change in the "Increase in Allowed Dwelling Units" category.

Two prior amendments have been approved within Statistical Area A2 since the adoption of the 2006 General Plan (GP2010-004) and the 2010 Zoning Code. Both of the amendments (shown in Table 1) involved land use changes from the RM (2420) designation to IG (General Industrial).

Table 1, summarizes the increase in allowed floor area, peak hour traffic (a.m. and p.m.) and reduction in the number of dwelling units created by the proposed amendment with the recommended CO-M designation at 0.49 FAR. The increases indicated in the table are based upon the City taking action on each amendment request separately and sequentially, where only 80 percent of the changes for each approved amendment are added to the changes for each following amendment. As indicated, none of the four (4) thresholds would be exceeded, and therefore, a vote pursuant to Charter Section 423 is not required. If the proposed General Plan amendment is approved by the City Council, the amendment will become a prior amendment and 80 percent of the increases will be tracked for ten years for any proposed future amendments. A more detailed analysis is attached (Attachment No. PC 4).

Table 1: Charter Section 423 Analysis Summary Statistical Area A2				
	Increase in Allowed Floor Area	Increase in a.m. Peak Hour Trips	Increase in p.m. Peak Hour Trips	Increase in Allowed Dwelling Units
Proposed GP2011-007 1419 Superior Avenue Prior Amendments (80%)	6, 689 sq. ft.	18	24	0
GP2011-005 1537 Monrovia Ave (PA2011-082)	13,432 sq. ft.	9	8	0
GP2011-006 1539 Monrovia Ave	19,857 sq. ft.	13	11	0
TOTALS	39,978 sq. ft.	40	43	0
Section 423 Thresholds	40,000 sq. ft.	100	100	100

SB18 Tribal Consultation Guidelines

Pursuant to Section 65352.3 of the California Government Code, a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that nine (9) tribe contacts should be provided notice regarding the proposed project. The appropriate tribe contacts supplied by the NAHC were provided notice on November 3, 2011. Section 65352.3 of the California Government Code requires 90 days to allow tribe contacts to respond to the request to consult unless the tribe contacts mutually agree to a shorter time period. To date, the City has not received any responses. Therefore, the Planning Commission may recommend the proposed project to City Council at this time. However, the City Council may not act on the proposed amendments until the 90-day notice period is concluded. Given that the sites are presently developed and that no development is proposed at this time, staff does not anticipate any conflicts or need for monitoring by the tribes. If any request for consultation is received from the tribes, such consultation will be completed prior to forwarding this application to the City Council for consideration.

Environmental Review

The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will bring the General Plan Land Use and Zoning District designations into consistency with the present use. The sites are presently developed and no new development is proposed at this time, which is categorically exempt under

Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1
(Existing Facilities).

Summary

The applicant has requested the amendments to allow retention of the existing medical office building and uses. The medical office building was constructed in 1957 and the medical uses were permitted uses, at that time, consistent with the provisions of the zoning code of the County of Orange. The subject properties are located within the County Triangle which was annexed in October 1979. The medical uses on the property have been in existence since construction of the medical office building. Staff believes that requiring abatement of the uses, at this time, would be contrary to the General Plan Policies, as stated above. Also continuation of these uses and future development consistent with the CO-M 0.49 FAR designation would not conflict with the General Plan. Staff does not foresee any adverse environmental impacts with continued use or redevelopment. The approval of the General Plan Amendment to the CO-M 0.49 FAR designation does not necessitate a vote of the electorate, as required by Section 423 of the City Charter.

Alternatives

Alternatives to the recommended amendments could include disapproval of the request and retention of the existing General Plan and Zoning designations of Multi-Unit Residential. If it is the desire of the Planning Commission to disapprove the request in its entirety, the attached resolution for denial is provided (Attachment No. PC 2). It should be noted that such an action would require abatement of the existing nonresidential uses in accordance with the provisions of the Zoning Code, Section 20.38.100.

Public Notice

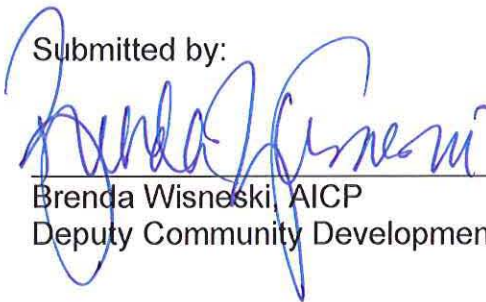
Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the properties, and was posted at the site a minimum of ten days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Kay Sims, Assistant Planner

Submitted by:



Brenda Wisneski, AICP
Deputy Community Development Director

ATTACHMENTS

- PC 1 Draft Resolution Recommending Approval with Attached Exhibits
- PC 2 Draft Resolution Denying the Amendment Requests
- PC 3 Relevant Information and Photos
- PC 4 Section 423 Analysis Table

Attachment No. PC 1

Draft Resolution Recommending
Approval with Attached Exhibits

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO THE CITY COUNCIL AMENDMENTS TO THE LAND USE ELEMENT OF THE GENERAL PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTI-UNIT RESIDENTIAL (RM 18 DU/AC) TO MEDICAL COMMERCIAL OFFICE (CO-M 0.49 FAR) AND TO CHANGE THE ZONING DISTRICT TO OFFICE-MEDICAL (OM 0.49 FAR), FOR PROPERTY LOCATED AT 1419 SUPERIOR AVENUE (PA2011-138)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. In 1957, the County of Orange authorized construction of a medical office building located at 1419 Superior Avenue.
2. The West Newport Mesa area of the City, commonly referred to as the County Triangle, was annexed to the City of Newport Beach October 7, 1979, pursuant to Resolution No. 9647. Portions of the annexation area were developed with multi-family residential units. Upon annexation into the City, the subject property became zoned R-3.
3. On May 29, 1990, the R-3 zoning designation was changed to MFR (2178) pursuant to adoption of City Council Ordinance No. 90-24.
4. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").
5. On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
6. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The multiple residential zoning designation of the subject property was changed from Multiple-Family Residential (MFR, 2178) to Multi-Unit Residential (RM 2420). Since the use of the subject property was

medical office in a residential zone, it was subject to abatement in accordance with Ordinance No. 2008-05.

7. On July 11, 2011, an application was filed by William Roy Morgan, M.D., F.A.C.S., owner of the subject property located at 1419 Superior Avenue, requesting approval of amendments to the General Plan and the Zoning Code to change the land use from multi-residential to medical office use.
8. The subject property is currently located within the Multi-Unit Residential (RM 2420) Zoning District and the General Plan Land Use Element category Multi-Unit Residential Land Use (RM 18 DU/AC).
9. The recommended change of the General Plan designation of 1419 Superior Avenue is from Multi-Unit Residential (RM 18 DU/AC) to Office-Medical (OM 0.49 FAR).
10. The recommended change of the Zoning District designation of 1419 Superior Avenue is from Multi-Unit Residential (RM 2420) to Medical Commercial Office (CO-M 0.49 FAR).
11. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: more than 100 peak hour trips (a.m. or p.m.), adds 40,000 square feet or more of non-residential floor area or adds more than 100 dwelling units in a statistical area.
12. This is the third General Plan Amendment that affects Statistical Area A2 since the General Plan update in 2006. The cumulative results that include 80 percent of the increase of the prior amendments approved at 1537 Monrovia Avenue (GP2011-005) and 1539 Monrovia Avenue (GP2011-006) further reduce the number of dwelling units (-31 = 0.0 dwelling units) and increases the non-residential floor area (39,977 square feet), resulting in an overall increase of 40 a.m. peak hour trips and an overall increase of 43 p.m. peak hour trips based on the blended commercial trip rates reflected in Council Policy A-18. As none of the four thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required.
13. A public hearing was held on December 8, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).

2. The proposed amendments are exempt since they do not entail any significant alteration to the subject property and are essentially bringing the General Plan Land Use Designations and Zoning Districts to be consistent with the existing use of the buildings and properties involved.
3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. Amendments to the General Plan are legislative acts. Neither the City nor State Planning law set forth any required findings for either approval or denial of such amendments.
2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience, and the general welfare.
3. The amendments for the subject property to allow the existing building and uses are consistent with the goals and policies of the General Plan, in particular the West Newport Mesa Policy Overview and Policies LU 6.6 and LU 6.6.1, since the property is in the vicinity of the Hoag Hospital complex and is located on the west side of the intersection of Superior Avenue and Hospital Road. It provides a medical facility that is clearly visible and easily accessible from either street, and provides a medical facility for residents of the area, the City, and visitors to the City's beaches. It is also located in the immediate area of the CO-M designated property located directly across Superior Avenue.
4. Future development of the subject property will be consistent with the goals and policies of the Land Use Element of the General Plan, specifically Policy LU 6.2.1 since the reduction in housing potential is not significant given the anticipated housing production within other areas of the City, and will not impede the City's ability to achieve housing production goals as set forth by the Southern California Area of Governments (SCAG).
5. The amendment will be consistent with the purpose and intent of the Office-Medical (OM 0.49 FAR) Zoning District of the Newport Beach Municipal since any future development of the property with uses other than those existing on the subject

property must comply with the development standards and requirements of the Zoning Code for the Office-Medical (OM 0.49 FAR) Zoning District.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-007, changing the designation from Multi-Unit Residential (RM 18 DU/AC) to Medical Commercial Office (CO-M 0.49 FAR); and Code Amendment No. CA2011-010 changing the designation from Multi-Unit Residential (RM 2420) to Office-Medical (OM 0.49 FAR), affecting 1419 Superior Avenue, Statistical Area A2, legally described as FIRST ADD TO NEWPORT MESA TR LOT 819 70 FT LOT IN LOT -EX PORS IN ST.
2. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Dr. Morgan Property Amendments (PA2011-138) including, but not limited to, General Plan Amendment No. GP2011-007 and Code Amendment No. CA2011-010**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicants shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicants shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
3. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 8th DAY OF DECEMBER, 2011.

AYES: _____

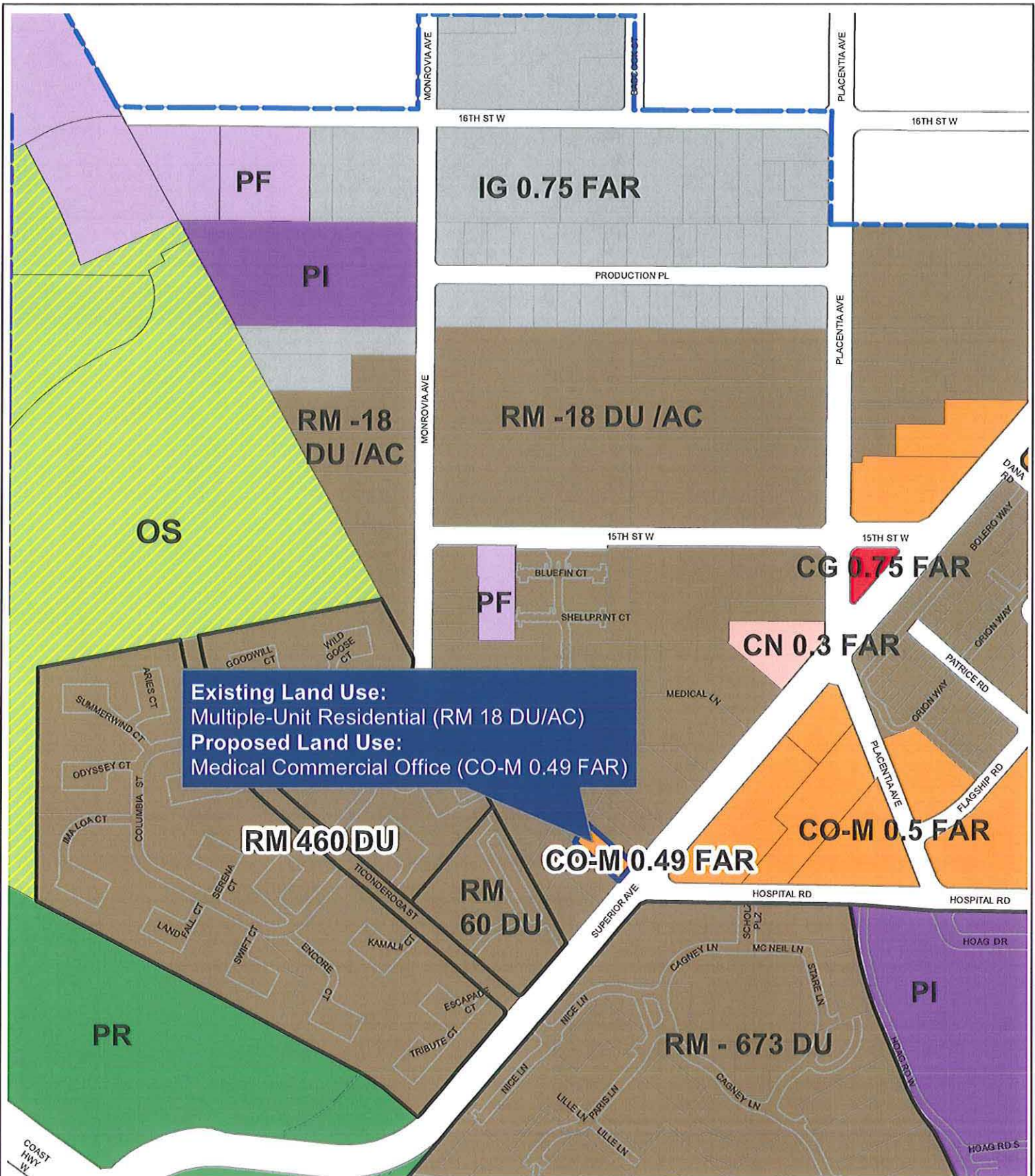
NOES: _____

ABSTAIN: _____

ABSENT: _____

BY: _____, Chairman

BY: Bradley Hillgren, Secretary



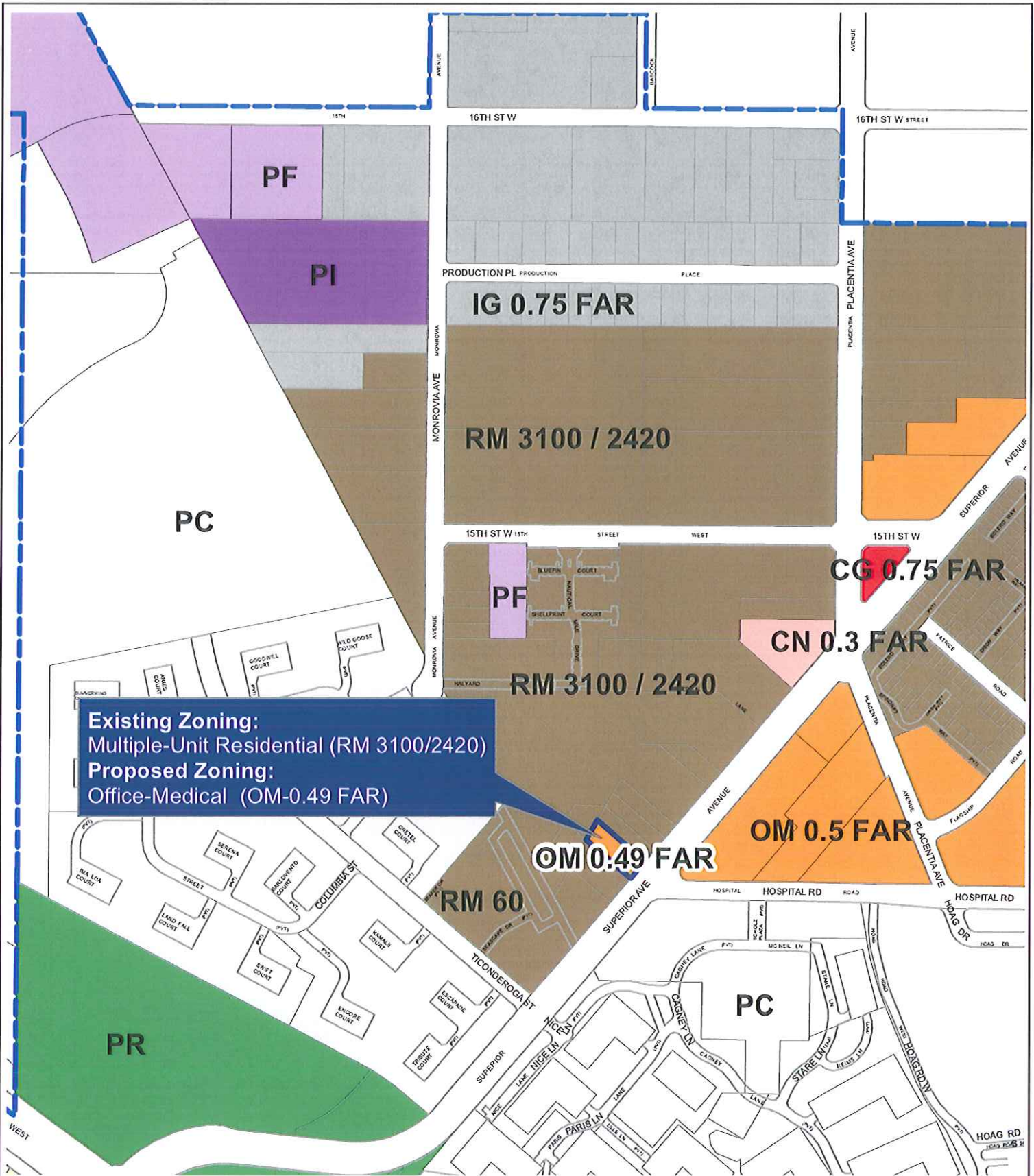
GP2011-007.mxd

GP2011-007 (PA2011-138) General Plan Amendment 1419 Superior Avenue

0 250 500 Feet



NEWPORT
 Info
 NEWPORT INFORMATION SYSTEMS



CA2011-010 (PA2011-138) Zoning Code Amendment

1419 Superior Avenue

0 250 500 Feet



NEWPORT
Beach
NEWPORT INFORMATION SYSTEMS

Attachment No. PC 2

Draft Resolution Denying the Amendment
Requests

RESOLUTION NO. #####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING AMENDMENTS TO THE LAND USE ELEMENT OF THE GENERAL PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTI-UNIT RESIDENTIAL (RM 18 DU/AC) TO MEDICAL COMMERCIAL OFFICE (CO-M 0.49 FAR) AND TO CHANGE THE ZONING DISTRICT DESIGNATION TO OFFICE-MEDICAL (OM 0.49 FAR), FOR PROPERTY LOCATED AT 1419 SUPERIOR AVENUE (PA2011-138)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. In 1957, the County of Orange authorized construction of a medical office building located at 1419 Superior Avenue.
2. The West Newport Mesa area of the City, commonly referred to as the County Triangle, was annexed to the City of Newport Beach October 7, 1979 pursuant to Resolution No. 9647. Portions of the annexation area were developed with multi-family residential units. Upon annexation into the City, the subject property became zoned R-3.
3. On May 29, 1990, the R-3 zoning designation was changed to MFR (2178) pursuant to adoption of City Council Ordinance No. 90-24.
4. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").
5. On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009.
6. On October 25, 2010, the City Council adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The multiple residential zoning designation of the subject property was changed from Multiple-Family Residential (MFR, 2178) to Multi-Unit Residential (RM 2420). Since the use of the subject property was medical office in a residential zone, it was subject to abatement in accordance with Ordinance No. 2008-05.
7. On July 11, 2011, an application was filed by William Roy Morgan, M.D., F.A.C.S., owner of the subject property located at 1419 Superior Avenue, requesting approval of

amendments to the General Plan and the Zoning Code to change the land use from multi-residential to medical office use.

8. The subject property is currently located within the Multi-Unit Residential (RM 2420) Zoning District and the General Plan Land Use Element category Multi-Unit Residential Land Use (RM 18 DU/AC).
9. The recommended change of the General Plan designation of 1419 Superior Avenue is from Multi-Unit Residential (RM 18 DU/AC) to Office-Medical (OM 0.49 FAR).
10. The recommended change of the Zoning District designation of 1419 Superior Avenue is from Multi-Unit Residential (RM 2420) to Medical Commercial Office (CO-M 0.49 FAR).
11. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: more than 100 peak hour trips (a.m. or p.m.), adds 40,000 square feet or more of non-residential floor area or adds more than 100 dwelling units in a statistical area.
12. This is the third General Plan Amendment that affects Statistical Area A2 since the General Plan update in 2006. The cumulative results that include 80 percent of the increase of the prior amendments approved at 1537 Monrovia Avenue (GP2011-005) and 1539 Monrovia Avenue (GP2011-006) further reduce the number of dwelling units (-31 = 0.0 dwelling units) and increases the non-residential floor area (39,977 sq. ft.), resulting in an overall increase of 40 a.m. peak hour trips and an overall increase of 43 p.m. peak hour trips based on the blended commercial trip rates reflected in Council Policy A-18. As none of the four thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required.
13. A public hearing was held on December 8, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2: CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. FINDINGS.

1. Amendments to the General Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare. The Planning Commission has determined that, in this particular case, that the current zoning designation is appropriate and that a change is not necessary for the public necessity and convenience and the general welfare.
3. The existing nonresidential use is not consistent with the goals and policies of the land use element of the General Plan or the Zoning District requirements; and, therefore, the current uses will be subject to abatement in accordance with Ordinance No. 2008-005.

SECTION 4. DECISION.**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby denies the requests for General Plan Amendment No. GP2011-007, changing the land use designation from Multiple Unit Residential (RM 18 DU/AC) to Medical Commercial Office (CO-M 0.49 FAR), and Code Amendment No. CA2011-010 changing the zoning district designation from Multi-Unit Residential (RM 2420) to Office-Medical (OM 0.49 FAR), affecting 1419 Superior Avenue, Statistical Area A3, legally described as FIRST ADD TO NEWPORT MESA TR LOT 819 70 FT LOT IN LOT -EX PORS IN ST.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 8th DAY OF DECEMBER, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____, Chairman

BY: Bradley Hillgren, Secretary

Attachment No. PC 3

Relevant Information and Photos

PA2011-1 for GP2011-007 CA2011-010
1419 Superior Avenue
William Roy Morgan, MD., F.A.C.S.













RESOLUTION NO. **9647**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPLYING TO THE LOCAL AGENCY FORMATION COMMISSION (LAFCO) OF ORANGE COUNTY FOR AUTHORIZATION TO ANNEX TO THE CITY OF NEWPORT BEACH CERTAIN INHABITED TERRITORY SURROUNDED BY THE CITY OF NEWPORT BEACH AND KNOWN AS THE "COUNTY TRIANGLE," PURSUANT TO THE MUNICIPAL ORGANIZATION ACT OF 1977 (Annexation No. 87)

WHEREAS, the logical formation and determination of the boundaries of the City of Newport Beach is an important factor in the orderly development of the City; and

WHEREAS, the proper management of islands of County territory by the City is essential to the social, fiscal and economic well-being of the City; and

WHEREAS, the extension of the logical boundaries of the City to include islands of County territory is appropriate; and

WHEREAS, the area known as the "County Triangle" is totally surrounded by the City of Newport Beach and can best be served by the City of Newport Beach,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newport Beach as follows:

1. The City Council of the City of Newport Beach hereby applies to the Local Agency Formation Commission of Orange County for authorization to order the annexation of the County Triangle without an election, pursuant to the Municipal Organization Act of 1977.

2. The area to be annexed, known as the County Triangle, is generally described as follows:

10/5/79

That area located between Superior Avenue on the southeast, the city limits of the City of Newport Beach on the north, and the city limits of the City of Newport Beach on the southwest,

and, said area is shown on the map attached hereto and marked Exhibit "A" and incorporated herein by this reference.

3. This proposed change of City boundaries is by form of annexation of an unincorporated island completely surrounded by the City of Newport Beach.

4. The City Council of the City of Newport Beach hereby requests that the proceedings to be taken for annexation of said area be authorized pursuant to the Municipal Organization Act of 1977 and that the proceedings may be taken without election pursuant to Section 35150(f) of the California Government Code, and that the Local Agency Formation Commission perform all acts necessary to implement said change of organization of the City of Newport Beach.

5. The nature of these proceedings are a jurisdictional boundary change for the logical inclusion of a County island within the corporate limits of Newport Beach.

ADOPTED this 9th day of October, 1979.

Paul Ryckoff
Mayor

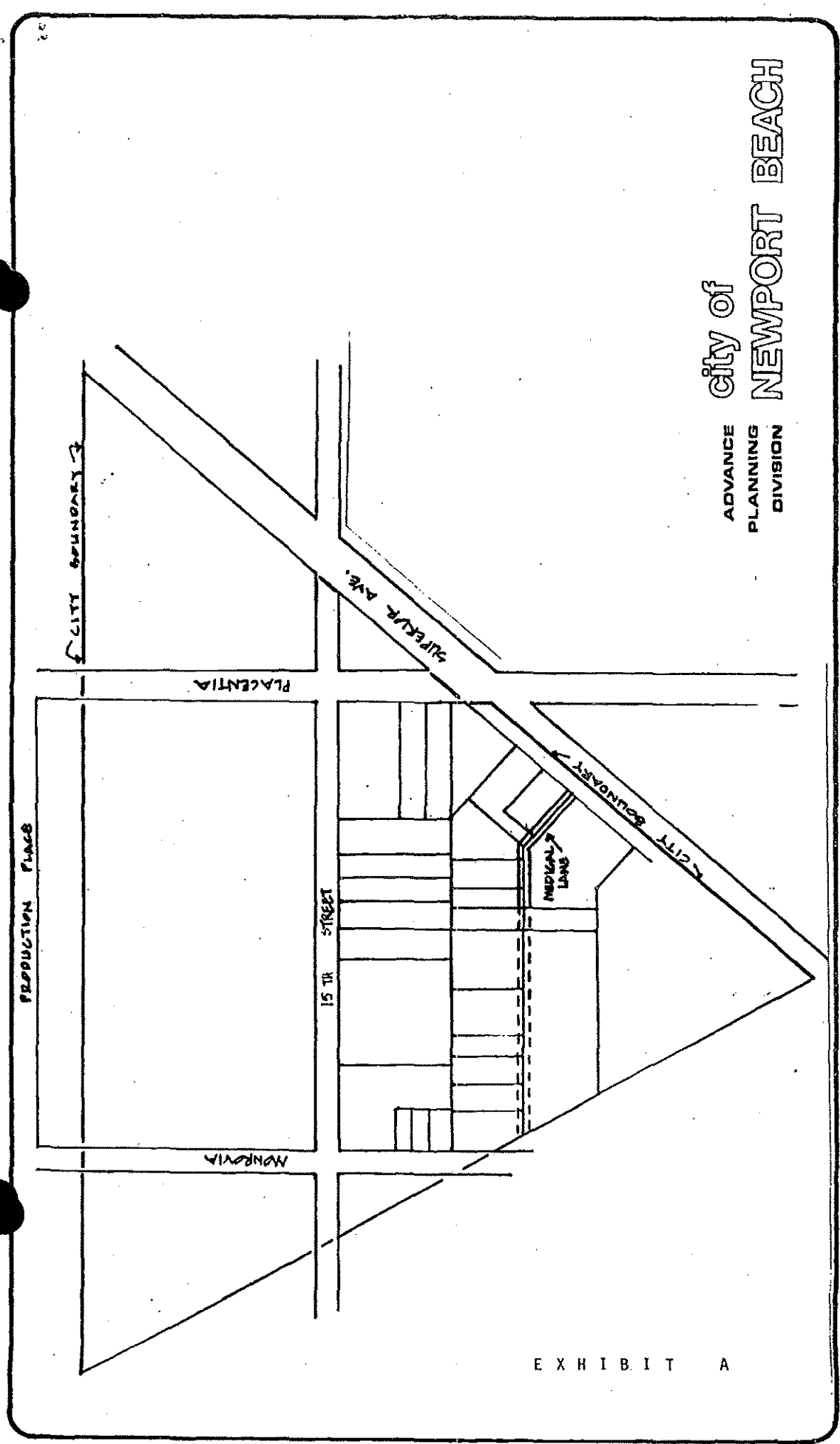
ATTEST:

Doris Deane
City Clerk

Doris Deane
CERTIFIED AS THE ORIGINAL
CITY CLERK OF THE CITY OF NEWPORT BEACH

HRC/kv
10/4/79

DATE OCT 11 1979



city of
NEWPORT BEACH
ADVANCE
PLANNING
DIVISION

EXHIBIT A

ORDINANCE NO. 90-24

AN ORDINANCE OF THE CITY OF NEWPORT BEACH AMENDING A PORTION OF DISTRICTING MAPS 2, 3, 6, 9, 11, 12, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 32, 37, 46, 50, AND 52, TO RECLASSIFY SPECIFIC LOTS CITYWIDE FROM THEIR CURRENT ZONES OF C-O-H, C-1-H, U, U-MHP, R-2, R-3, R-3-B, R-3-MHP, R-3-SPR, R-4, SP-6, SP-6(R-4), SP-6(R-3), AND SP-6(R-2) TO MFR, MFR-B, MFR-MHP, MFR-SPR, AND SP-6 MFR AND AMENDING THE CANNERY VILLAGE/MCFADDEN SQUARE SPECIFIC PLAN (SP-6) TO INCLUDE A MULTI-FAMILY RESIDENTIAL(MFR) ZONING DISTRICT, A R-1 ZONING DISTRICT AND AMEND THE R-2 ZONING DISTRICT AND COMMERCIAL DEVELOPMENT STANDARDS OF SP-6.

(Planning Commission Amendment No. 698)

The City Council of the City of Newport Beach does ordain as follows:

SECTION 1. The subject property is the following real property in the City of Newport Beach, County of Orange, State of California:

TRACT 10272 LOT 1
FIRST ADD TO NEWPORT MESA TRACT LOT 815, 816, 915, 916
FIRST ADD TO NEWPORT MESA TRACT LOT 817 PORTION OF
LOT, P M 209-20
FIRST ADD TO NEWPORT MESA TRACT LOT 817 W66 FT in lot
FIRST ADD TO NEWPORT MESA TRACT LOT 918 W1/2 E 1 AC W
158.88 FT IN LOT
FIRST ADD TO NEWPORT MESA TRACT LOT 917 W 293.25 FT
E365.85 FT in lot
PM 237-1 PAR 1
NEWPORT HEIGHTS LOT 47 SELY 210.12 FT NWLY 444 FT -EX
NWLY 78 FT N ELY 105 FT & NWLY 18 FT-
NEWPORT HEIGHTS LOT 47 SELY 78 FT NWLY 311.88 FT NELY
105 FT -EX N WLY 18 FT-
RESUB 657 (P M 160-10 PAR 1)
RESUB 656 (P M 159-17 PAR 1)
RESUB 224 (P M 005-37 PAR D)
NEWPORT BEACH SEC A LOT F
TR 10274 LOT 1
IRVINE SUB LOT 171 BLK 54 POR OF LOT
TR 3867 LOT B
TR 8917 LOT 1
TR 3232 LOT 6
TR 4692 LOTS 1-99
TR 1396 LOT 1
TR 5616 LOT 1
TR 8406 LOT 1
CORONA DEL MAR LOT BLK D POR OF BLK K
PM 222-29 PAR 1
PM 228-35 PAR 1
RESUB 601 (P M 138-23 PAR 1)
TR 1220 LOTS 2-28
PM 041-43
PM 041-45
CORONA DEL MAR BLK 231 AND BLK 232 INCLUDING PORTIONS
OF ABAND STREETS AND ALLEYS
FIRST ADD TO NEWPORT MESA TRACT LOT 917 E 72.6 FT IN LOT

IRVINE SUB BLK 94, RESUB 758 (PM 185/9-10), RESUB 396 (PM 59/39)
 TRACT 1237 LOT 1
 TR 7789 LOT 1
 PM 216-28 PAR 1
 BALBOA TR EAST SIDE ADD BLK 22 LOT 9 POR OF LOT AND T
 7 R 10 SEC 2 POR NE 1/4
 TR 12035 LOT 1
 BALBOA TR BLK 2 LOTS 1-4
 TR 10135 LOT 1
 TR 8073 LOT 2
 TR 7599 LOT 1
 TR 6027 LOT 1
 TR 12208 LOT 1
 TR 10849 LOT 1
 TR 11935 LOTS 1-3
 BALBOA TR BLK 3 LOTS 4-8
 PM 39-23
 TR 1718 LOTS 3,4, & 6-21
 TR 5854 LOTS 1-5, & 8-12 AND RESUB 206 (P M 80-37)
 IRVINE SUB PORTION BLK 53 LOT 164 5.83 AC IN LOT
 CORONA DEL MAR BLK 238 (ODD LOTS 1-31) & BLK 239 (EVEN
 LOTS 2-32)
 TR 518 BLK J LOTS 17-28
 FIRST ADD TO NEWPORT MESA TR LOT 917 S 48 FT W 148 FT IN
 LOT
 FIRST ADD TO NEWPORT MESA TR LOT 917 N 50 FT S 98 FT W
 148 FT IN LOT
 FIRST ADD TO NEWPORT MESA TR LOT 917 100 FT W 148 FT S
 148 FT IN LOT -EX S 50 FT-
 TR 12079 LOT 1
 CORONA DEL MAR POR BLK C
 IRVINE SUB LOT 169 BLK 2 IRREG LOT
 IRVINE SUB LOT 169 BLK 2 POR OF LOT AS DESC IN DD -
 7839/781 OR-
 TR 5783 LOT 1-20
 FIRST ADD TO NEWPORT MESA TR LOT 817 N 66 FT S 132 FT E
 1/2
 FIRST ADD TO NEWPORT MESA TR LOT 715
 TR 3813 LOT 104
 TRACT 3606 LOTS 1-11
 RESUB 580 (P M 120-41-42), TR 8638 LOT 1
 IRVINE SUB LOT BLK 93 POR OF BLK (P M 35-1 PAR 1)
 IRVINE SUB LOT 235 BLK 93 7.46 AC IN SWLY 1/2
 TR 8381 LOT 1
 PM 133-47 PAR 1
 TR 2758 LOTS 1-24
 TR 13013 LOT 1
 TR 10297 LOT 1
 TR 12360 LOTS
 NEWPORT HEIGHTS LOT 47 POR OF LOT
 TR 907 LOTS 458-492, 830-848, 885, 920-925, 1081-1089, 1092-1094, P M
 112-04 PAR 1, P M 146-26, TR 8362 LOT 1, P M 105-43 PAR 1
 TR 7530 LOT 1
 TR 14028
 NEWPORT BEACH SEC B BLK 18 LOTS 1-14, P M 212-17
 FIRST ADD TO NEWPORT BEACH BLK 20 LOTS 1-3 ALL -INC 10
 FT ADJ ON SW- -INC POR ABAN ST ADJ- AND SELY 10 FT
 LOT 9-13 BLK 20, RESUB 326 (PM 41-43)
 TR 1893 LOTS 1-3 & 7-27
 RESUB 609 (P M 132/25 PAR 1)
 PM 224-7
 FIRST ADD TO NEWPORT MESA TRACT POR LOT 819, 918, AND
 LOT 919

as shown on the attached Exhibit "A" and hereinafter referred to as "Properties." Title 20 of the Newport Beach Municipal Code is hereby amended to rezone all of the above described Properties from the C-O-H, C-1-H, U, U-MHP, R-2, R-3, R-3-B, R-3-MHP, R-3-SPR, R-4, SP-6, SP-6 (R-4), SP-6 (R-3), and SP-6 (R-2) Districts to MFR, MFR-B, MFR-MHP, MFR-SPR, and SP-6 MFR.

SECTION 2. The Planning Director of the City of Newport Beach is hereby instructed and directed to change the Districting Maps No. 2, 3, 6, 9, 11, 12, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 32, 37, 46, 50, and 52, referred to in Section 20.01.050 of the Newport Beach Municipal Code, and by such reference is made a part of Title 20, prior to the effective date of this ordinance, to reflect the change as described in Section 1 hereof, and shown in the attached Exhibit "B."

SECTION 3. Chapter 20.63 of Title 20 of the Newport Beach Municipal Code is hereby amended as shown in Exhibit "C" to include the Multi-Family Residential (MFR) Zoning District and the R-1 Zoning District subject to certain exceptions and change the R-2 and Commercial Development Standards of the Cannery Village/McFadden Square Specific Plan (SP-6).

SECTION 4. The Planning Director of the City of Newport Beach is hereby instructed and directed to change the Cannery Village/McFadden Square Specific Plan (SP-6), referred to in Chapter 20.63 of the Newport Beach Municipal Code, and by such reference is made a part of Title 20, prior to the effective date of this ordinance, to reflect the change as described in Section 3 hereof, and shown in the attached Exhibit "C."

SECTION 5. The amendments described in this Ordinance shall be effective and in full force thirty days from and after the date of its adoption. The City shall not refuse to issue building permits, on the basis of zoning inconsistency, for those projects which are consistent with the standards in effect at the time plans are submitted. These plans must be submitted to the Building Department or Planning Department for building permit or approval in concept prior to the effective date of this ordinance provided, that such submittal has been accepted as full and complete, that no discretionary approval is required, and that the applicant diligently processes the plans and provides the Building and Planning Departments with all necessary information preliminary to the issuance of a building permit or approval in concept.

SECTION 6. The Planning Director of the City of Newport Beach is also hereby instructed and directed to apply all of the provisions of said District to the Properties as described herein; the same shall be in full force and effect and be a part of Title 20 of the Newport Beach Municipal Code.

SECTION 7. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. This Ordinance shall be published once in the official newspaper of the City within fifteen (15) days of its adoption. This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 14th day of May, 1990, and was adopted on the 29th day of May, 1990, by the following vote, to wit:

AYES, COUNCIL MEMBERS TURNER, WATT, SANSONE,

PLUMMER, HART, COX

NOES, COUNCIL MEMBERS NONE

ABSENT COUNCIL MEMBERS STRAUSS

Ruthely Plummer
MAYOR

ATTEST

Wanda E. Raggio
CITY CLERK

F\JM\ORD\A698MFR.222

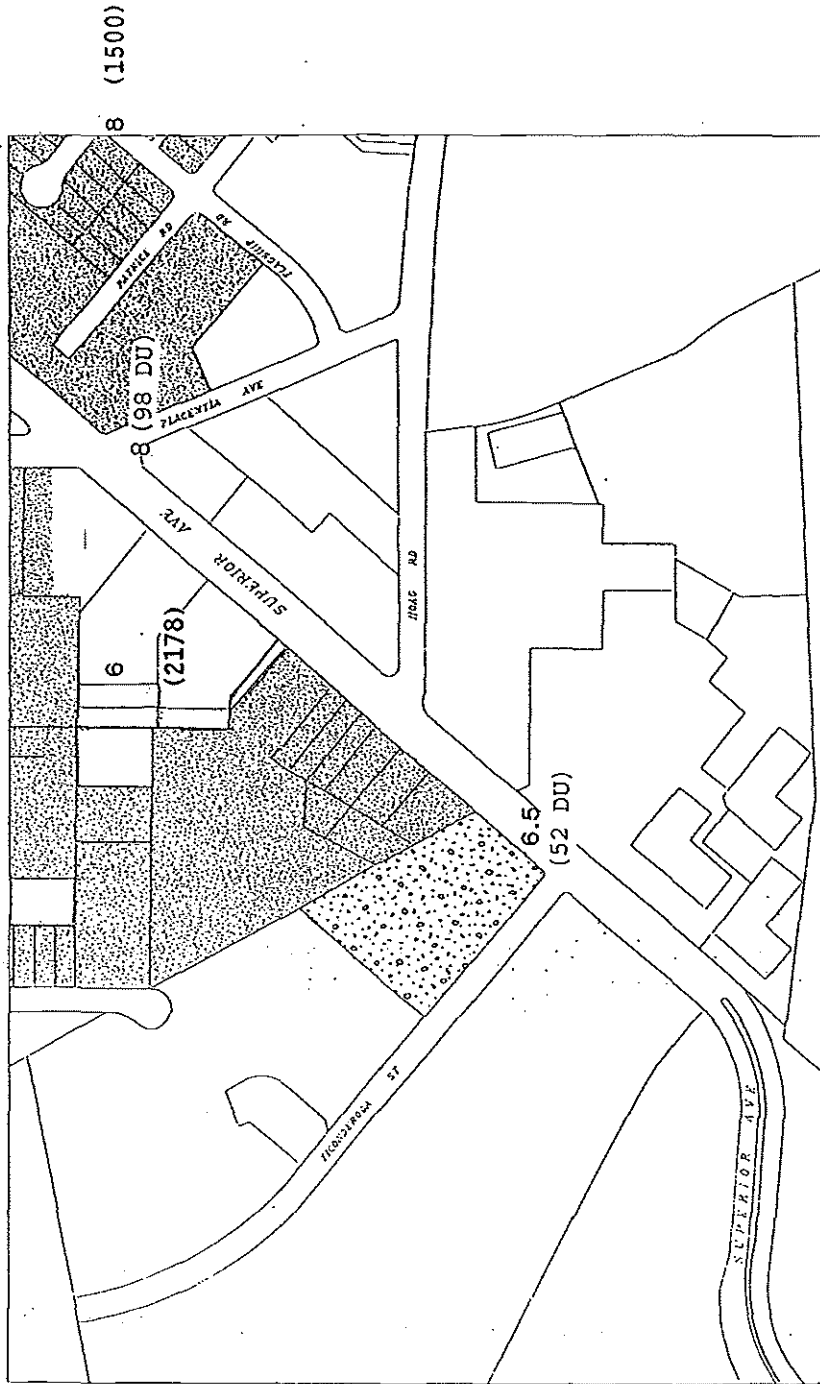
Attachment: Exhibit "A," "B," and "C"



CHANGE TO MFR

From R-3

From R-4



MAP 4

Attachment No. PC 4

Section 423 Analysis Table

Address	Existing Development	GP	Allowed Density	Allowed Intensity/floor area	Existing Traffic Land Use Description	Existing AM	Existing PM	Proposed GP	Proposed density	Proposed Intensity/Floor Area	Proposed Traffic Land Use Description	Proposed AM	Proposed PM	AM Change	PM Change	Total du changes	Total square footage changes
ACTION 1 APPROVAL (GP2011-005) WITHIN THIS STATISTICAL AREA A2																	
1537 Monrovia Avenue, APN 424-401-08	The Allred Property, 33, 580 square-foot lot developed with two, light industrial use buildings	RM (2420)	13	0	#230 - Residential/Condominium Townhouse (0.44AM/0.54PM trips per unit)	6	7	IG, allows FAR 0.50 max	0	16,790.00	Industrial rate per Council Policy A-18 (1.0 AM & 1.0 PM trips per 1,000sf)	17	17	11	10	-13	16,790.0
80% of Approved Intensity- FAR										13,432.00		13	13	9	8	-10	13,432
ACTION 2 APPROVAL -GENERAL PLAN AMENDMENT NO. GP2011-006 - STATISTICAL AREA A2																	
1539 Monrovia Avenue, APN 424-401-06	The Dvorak Property, 49,642 square-foot lot developed with a single-story, multi-tenant, light industrial building	RM (2420)	20	0	#230 - Residential/Condominium Townhouse (0.44AM/0.54PM trips per unit)	9	11	IG, allows FAR 0.50 max	0	24,821	Industrial rate per Council Policy A-18 (1.0 AM & 1.0 PM trips per 1,000sf)	25	25	16	14	-20	24,821
80% of Approved Intensity- FAR										19,857		20	20	13	11	-16	19,857
1419 Superior Avenue, APN 424-021-07	The Dr. Morgan Property, 13,650 square-foot lot developed with a 6,590 s.f. two-story, multi-tenant office building	RM (2420)	5	0	#230 - Residential/Condominium Townhouse (0.44AM/0.54PM trips per unit)	2	3	CO-G, allows FAR 0.50 max, 0.49 PROPOSED	0	6,689	Commercial rate per Council Policy A-18 (3.0 AM & 4.0 PM trips per 1,000sf)	20	27	18	24	-5	6,689
TOTAL FOR STATISTICAL AREA A2			38	0		17	21		0.00	39,977		53	60	40	43	-31	39,977

Burns, Marlene

PA2011-138

From: Wisneski, Brenda
Sent: Friday, December 02, 2011 3:36 PM
To: Burns, Marlene
Subject: FW: Dr. Morgan Property Amendments
Attachments: Scan001.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

From: Dennis D. O'Neil [<mailto:doneil@oneil-llp.com>]
Sent: Friday, December 02, 2011 2:58 PM
To: Michael Toerge; Bradley Hillgren; rhawkins@earthlink.com; Fred Ameri; Kory Kramer; Jay Myers
Cc: Brandt, Kim; Wisneski, Brenda; Sims, Kay; Mulvihill, Leonie; drwrmorgan@gmail.com
Subject: Dr. Morgan Property Amendments

To Members of the Planning Commission:

I represent Dr. Morgan on his application for amendments to the General Plan and Zoning Code to allow the continued medical uses on the property located at 1419 Superior Avenue. This matter is Item No. 3 on the agenda for your meeting on December 8, 2011. Dr. Morgan originally filed the attached application to extend the non-conforming use abatement period after receiving notice that the existing medical office uses were non-conforming and would no longer be permitted on his 1419 Superior Avenue property. Later, a decision was made to pursue the GPA and zone change in lieu of the amendments.

Much of the information included in the abatement period extension application has relevance and I am hereby submitting the attached application to be considered as part of the record in this proceeding.

Thank you,

Dennis D. O'Neil
O'Neil LLP
19900 MacArthur Blvd., #1050
Irvine, CA 92612
(949) 798-0734 (tel.)
(949) 798-0511 (fax)
doneil@oneil-llp.com

NOTICE TO RECIPIENT: THIS E-MAIL IS ATTORNEY PRIVILEGED AND CONFIDENTIAL AND MEANT ONLY FOR THE REVIEW AND USE OF THE INTENDED RECIPIENT OF THE TRANSMISSION. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

<<Scan001.PDF>>

Abatement Period Extension Application


Planning Department
3300 Newport Boulevard, Newport Beach, CA 92663
(949) 644-3200 Telephone 1 (949) 644-3229 Facsimile
www.newportbeachca.gov

Property Owner/Applicant Name: William Roy Morgan, M.D., F.A.C.S.	Contact (if different) Name: Dennis D. O'Neil
Mailing Address: Equity Enterprises, Ltd.	Mailing Address: O'Neil LLP
1419 Superior Ave., Ste. #2, Newport Beach, CA 92663	19900 MacArthur Blvd., Suite 1050, Irvine, CA 92612
Phone: () 949-645-6665	Phone: () 949-798-0734
Fax: () 949-645-6784	Fax: () 949-798-0511
Email Address: drwrmorgan@gmail.com	Email Address: doneil@oneil-llp.com

Owner's Affidavit

Dennis D. O'Neil, on behalf of applicant Dr. William Morgan,

(I) (We) _____ depose and say that (I am) (we are) the owner(s) of the property(ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s) 

Date June 7, 2011

Owner's Agent Authorization Letter Attached

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

Please answer the questions below. Attach additional sheets, if necessary.

1. Please describe how abatement of the use at this time relates to your investment in the use.

By letter dated January 14, 2011, Dr. William Roy Morgan, principal partner of Equity Enterprises, Ltd. and owner of the building (the "Building") at 1419 Superior Avenue (the "Property") was notified that the zoning classification for the Property was changed from Administrative-Professional-Financial (APF) to Multiple Residential (RM). The uses in the Building are now considered non-conforming and subject to abatement which must be discontinued on or before November 25, 2011. This application is being filed requesting a time extension for the abatement period. Dr. Morgan may at a future time submit and process an amendment to the General Plan and zoning code to remove the non-conforming use classification and convert the Property and Building to the existing permitted uses for medical, clinical, dental and other medical office uses. As will be explained in answer to Question #2, Dr. Morgan has occupied the Building for his medical offices and cosmetic surgery center since 1985. In addition, Dr. Morgan has entered into multi-year leases with tenants in the other suites in the Building currently occupied by a walk-in medical clinic and dental offices. Dr. Morgan has over \$1 million invested in improvements in the Building. Rezoning the Property to residential does not serve to protect the public health, safety or welfare and would constitute an unconstitutional taking of the Property without providing just compensation. As will be explained later in answers to other questions on this application, it would not be appropriate or, for that matter, even possible to convert the Property to a residential use and relocate the existing uses to another area if, in fact, such another location existed, which it does not.

2. How long has the use been operating?

Dr. William Roy Morgan is the sole partner and principal of Equity Enterprises, Ltd., the record owner of the property at 1419 Superior Avenue. The Property was acquired by Dr. Morgan in 1978 and over \$1 million has been spent to upgrade and renovate the Building on the Property during the period of 1978-1981. There are six medical/dental offices located on the subject property. Since 1983, the office suite at the front of the Building continues to be occupied by the Superior Walk-In Medical Clinic. This emergency and urgent care facility fronts on the major Superior Avenue thoroughfare affording prominent visibility and convenient access and parking for residents of Newport Beach and visitors to the beaches nearby. Two of the building suites contain medical offices and a surgery center occupied by Dr. Morgan who specializes in cosmetic surgery and has practiced his profession at this facility for over 25 years. The remaining three suites in the building are occupied as dental offices. It should be understood that it took a period of over seven years to license and certify the surgery center by the federal and state regulatory agencies having jurisdiction over this type of a facility. The Building is located nearby and across from other medical office buildings. Hoag Memorial Hospital Presbyterian is located in the immediate vicinity of the Building. Hoag Health Center is located on Superior Avenue, a few blocks from the Property.

3. Please describe the suitability of the structure for an alternative use.

There are no other suitable uses for the Building or any alternate use other than those medical, clinical and dental uses currently occupying the Property. Dr. Morgan tells me it would take anywhere from seven to ten years of permitting, licensing and regulatory federal and state agency approvals to establish another surgery center similar to the surgery center located in the Building. Costs associated with obtaining a surgery center certification from the regulatory agencies and constructing and developing such a surgery center would be prohibitive and take an extraordinary amount of time. Under any relocation scenario, Dr. Morgan would suffer significant financial damages, but, more importantly, he would incur an impairment of his surgical skills by the delay of time it would take to license and construct a new surgery center during which he would not be able to practice his profession. Dr. Morgan's livelihood would further be adversely impacted significantly by the loss of rental income from the other building suites and he would be placed in a position of breaching legally binding contractual commitments and leases with the existing tenants.

4. Please describe way there would be no harm to the public if the use remains beyond the abatement period.

There is no record of any complaints from patients or neighboring property owners or anyone else concerning traffic, parking, noise or any nuisance problems associated with the operation of the medical, clinical and dental offices at the Building on the Property. To the contrary, the Superior Walk-In Medical Clinic has provided a significant facility offering emergency urgent care for the public's convenience, health and safety for many years. This is equally true and would also apply to the other uses in the Building.

5. Please describe the cost and feasibility of relocating the use to another site.

Regardless of the prohibitive costs involved, there is no other property in the vicinity of 1419 Superior Avenue which could accommodate the uses currently in existence in the Building. Termination of the medical, clinical and dental uses in the Building would result in a significant loss of patients and goodwill which has been established over the past 25 years. The cost and feasibility of relocating the existing uses in the Building to another site and converting the Property to a residential use would subject the City to payment of just compensation and damages which could amount to millions of dollars.

6. Is there any other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property?

It is acknowledged that zoning ordinances may require termination of non-conforming uses by providing for a reasonable amortization period, but must consider the investment involved. The reasonableness of the amortization period depends, among other things, on such factors as including the depreciated value of the structure to be removed, the viability and practicality of removing the structure and uses in the Building, the remaining useful life of the structure, and the harm to the public if the structure is left remaining.

In order to avoid an unconstitutional taking of Dr. Morgan's property, this request is respectfully made for a minimum period of 20 years to abate and terminate the legal non-conforming use on the property at 1419 Superior Avenue in the City of Newport Beach.

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

December 8, 2011 Hearing
Agenda Item 4

SUBJECT: Presta Property Amendments (PA2011-179)
2888 & 2890 Bay Shore Drive

- General Plan Amendment No. GP2011-008
- Code Amendment No. CA2011-011
- Local Coastal Plan Amendment No. LC2011-004

APPLICANT: Ron E. Presta of Palmo Investments GP

PLANNER: Makana Nova, Assistant Planner
(949) 644-3249, mnova@newportbeachca.gov

PROJECT SUMMARY

Amendments to the General Plan, Coastal Land Use Plan and Zoning Map to change the land use designations of two properties. No changes in the existing uses or development are proposed at this time.

2888 Bay Shore Drive (Bay Shores Apartments):

One property, the southern parcel, is located at 2888 Bay Shore Drive, and would remain designated for multiple-unit residential development, but the allowed density would be modified to reflect the existing 39 unit apartment complex. The following amendments are requested:

- 1) General Plan Land Use designation from Multiple-Unit Residential (RM, 20 du/ac) to Multiple-Unit Residential (RM, 39 du),
- 2) Coastal Land Use Plan designation from Multiple-Unit Residential (RM-C) to Multiple-Unit Residential (RM-D), and
- 3) Zoning designation from Multi-Unit Residential (RM, 2178) to the Multi-Unit Residential (RM, 39 du).

2890 Bay Shore Drive:

As to the second property, the applicant requests a land use change for the northern parcel, located at 2890 Bay Shore Drive, from Multiple-Unit Residential to Mixed-Use Water Related to maintain the existing commercial uses. The following amendments are requested:

- 1) General Plan Land Use designation from Multiple-Unit Residential (RM, 20 du/ac) to Mixed-Use Water Related (MU-W2, 1 du),
- 2) Coastal Land Use Plan designation from Multiple-Unit Residential (RM-C) to Mixed-Use Water Related (MU-W), and
- 3) Zoning designation from Multi-Unit Residential (RM, 2178) to the Mixed-Use Water Related (MU-W2, 1 du).

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) and attached Exhibits recommending the City Council:
 - Approve General Plan Amendment No. GP2011-008;
 - Approve Local Coastal Plan Amendment No. LC2011-004; and
 - Approve Code Amendment No. CA2011-011.



	CHANGES: CURRENT to PROPOSED		
LOCATION:	GENERAL PLAN:	COASTAL LAND USE PLAN:	ZONING:
2888 Bay Shore Drive	RM (20 du/ac) to RM (39 du)	RM-C to RM-D	RM (2178) to RM (39 du)
2890 Bay Shore Drive	RM (20 du/ac) to MU-W2 (1 du)	RM-C to MU-W	RM (2178) to MU-W2 (1 du)
SURROUNDING USES:	CG (General Commercial) and CM (Recreational and Marine Commercial)	CM-A (Recreational and Marine Commercial)	CG (Commercial General) and PC-37 (Castaway's Marina Planned Community)
North	RS-D (Single-Unit Residential Detached)	RSD-B (Single-Unit Residential Detached)	R-1 (Single-Unit Residential)
West and South	Newport Bay	Newport Bay	Newport Bay
East			

INTRODUCTION

Project Setting

The properties are located on the inland side of Newport Harbor at the southeast corner of the intersection of West Coast Highway and Bay Shore Drive. Both parcels are designated by the Land Use Element of the General Plan, Coastal Land Use Plan, and the Zoning Code for multiple-unit residential use. Both properties are accessible from West Coast Highway via Bay Shores Drive, a private street.

The southern parcel at 2888 Bay Shore Drive is approximately 1.55 acres in area and is currently developed with the Bay Shore Apartments consisting of 39 dwelling units.

The northern parcel at 2890 Bay Shore Drive is approximately 0.46 acres in area. The parcel is developed with carports and surface parking to accommodate the adjacent residential development, a storage unit facility, and a mixed-use building consisting of a leasing office for Bay Shore Apartments and Swales Anchorage Marina, a marine surveyor's office, and a caretaker's unit on the second floor. Due to the commercial uses on the property, the property is nonconforming with the General Plan, Coastal Land Use Plan and the Zoning Code designations.

The properties to the west and south are developed with a 528-lot, single-family residential tract known as the Bay Shores Community. The properties to the north, across West Coast Highway, are currently vacant and undeveloped. A retail shopping center, known as Mariner's Pointe, is planned at 200 West Coast Highway located at the northwest corner of West Coast Highway and Dover Drive. Newport Harbor is to the east and adjacent to the subject properties.

Background

On May 21, 1959, the Newport Beach Planning Commission approved Ordinance No. 635 approving Use Permit No. UP518 and Variance No. VA535 for the development of 39 dwelling units with an accessory building, office, and carports at 2888 Bay Shore Drive (Attachment No. PC 3).

On July 15, 1959, building permits were issued that authorized the construction of a mixed-use building consisting of an accessory office, apartment, and carports located at 2890 Bay Shore Drive. At that time, the property was in the U (Unclassified) Zoning District.

On January 15, 1960, building permits were issued that authorized the construction of 38 dwelling units, carports, laundry, storage, and a semi-public swimming pool for the apartment complex at 2888 Bay Shore Drive.

On August 14, 1961, Ordinance No. 969 was adopted by the City Council to change the land use designation of the subject properties from U (Unclassified) to the R-3 (Restricted Multiple Family Residential) Zoning District.

On May 29, 1990, the City Council adopted Ordinance No. 90-24, changing the land use of the subject properties from Restricted Multiple Family Residential (R-3) to Multiple-Family Residential (MFR, 2178).

On June 30, 1995, Resubdivision No. 1007, which identifies the subject properties as Parcel 1 and 2 of Parcel Map No. 94-115, was recorded (Attachment No. PC 4).

On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").

On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update.

On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009, and the subsequent Zoning Code Update which became effective November 25, 2010.

On October 25, 2010, the City Council Adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The multiple residential zoning designations of the subject properties were changed from Multiple-Family Residential (MFR, 2178) to Multi-Unit Residential (RM, 2178). Upon the effective date of the Comprehensive Update to the Zoning Code, Ordinance no. 2008-005 became effective. As a result of that action, existing nonconforming commercial uses located within residential districts became subject to abatement in accordance with Ordinance No. 2008-05.

The City has sent letters to all known uses that are subject to abatement pursuant to Ordinance No. 2008-05. Staff has met with and continues to meet with many of the owners of the properties that are subject to abatement. Staff has explained to those owners the options available to them as a result of the parcels nonconformance Remedies may include conversion of use or development to a residential use; request for extension of the abatement period; and/or request to amend the General Plan, the Coastal Land Use Plan, and the Zoning Code to allow the continuation of the commercial use. In the case of the subject application, the owner chose to pursue amendments to change the land use designations of their properties. The application does not include a plan for development at this time.

DISCUSSION

Amendments to the General Plan Land Use Plan, the Coastal Land Use Plan, and the Zoning Code are legislative acts. Neither City nor State Planning Law sets forth required findings for approval or denial of such amendments. However, when making a recommendation to the City Council, the Planning Commission should consider applicable policies and development standards to ensure internal consistency. The following sections analyze each property individually for consistency with the General Plan policies and Zoning Code development standards. The subsequent sections assess both properties together for consistency with the Coastal Land Use Plan, Charter Section 423, and SB-18 (Tribal Consultation Guidelines).

2888 Bay Shore Drive-General Plan Amendment

The current RM (Multiple-Unit Residential) General Plan land use designation would not change because the use currently reflects the existing apartment development on the property. The applicant requests to amend the General Plan to reflect the density of the existing development (39 dwelling units), which results in a density of approximately 25 du/ac. The existing General Plan designation allows 20 du/ac and may have been so designated to incorporate both 2888 and 2890 Bayside Drive as a single building site.

The General Plan contains objectives, policies, and distributions of land use for development in the City. The following General Plan policies are pertinent to the proposed amendment at 2888 Bay Shore Drive:

1. LU 5.6.1 Compatible Development

"Require that buildings and properties be designed to ensure compatibility within and as interfaces between neighborhoods, districts, and corridors."

The existing multi-family residential development provides an interface between the more intense commercial uses along the West Coast Highway corridor and the quieter single-family residential tract of the Bay Shores Community. The existing development has proven compatible with existing development in the Bay Shores area since its original development in 1960.

2. LU 6.2.1 Residential Supply

"Accommodate a diversity of residential units that meets the needs of Newport Beach's population and fair share of regional needs in accordance with the Land Use Plan's designations, applicable density standards, design and development policies, and the adopted Housing Element."

The proposed amendment to the General Plan would change the permitted density of 2888 Bay Shore Drive to reflect the existing development. Permitting a density that reflects the existing development on the subject property will help the City maintain an adequate housing supply.

2888 Bay Shore Drive -Zoning Code Amendment

The stated purpose and intent of the Zoning Code is to carry out the policies of the City of Newport Beach General Plan. Consistency between the General Plan designation and Zoning is critical to ensure orderly development and enforcement. The main purpose of the requested amendment is to maintain the existing multi-family residential development as was originally approved on May 21, 1959, under Use Permit No. UP518 and Variance No. VA535 for the construction of 39 dwelling units.

The RM Zoning District is intended to provide for areas appropriate for the multi-unit residential developments containing attached or detached dwelling units. Existing residential development at 2888 Bay Shore Drive would conform to the standards of the current Multi-Unit Residential (RM) zoning district. Under the existing RM designation, 2888 Bay Shore Drive could be developed with a maximum of 31 residential dwelling units. A total of 106 parking spaces are required per Use Permit No. UP518. Parcel Map No. 94-115, created an easement for parking, vehicular access, and pedestrian access over both parcels to reserve required parking areas for 2888 Bay Shore Drive.

If amended to the Multi-Unit Residential (RM 39) zoning district, the property could be developed with up to 39 dwelling units, which is consistent with the existing development. Redevelopment would be subject to all applicable RM development standards.

2890 Bay Shore Drive -General Plan Amendment

The applicant requests to amend the General Plan from a multiple-unit residential designation to a mixed-use designation. The proposed MU-W2 land use designation is intended to provide for marine-related uses intermixed with buildings that provide residential on the upper floors. MU-W2 designated sites are also allowed to be developed exclusively for non residential uses. Permitted uses include those allowed by the CM, CV, and MU-V designations. The proposed density of residential development on the subject property is limited to one dwelling unit, which reflects the existing development. Table 1 summarizes the maximum density/intensity permitted under the Mixed-Use Water Related (MU-W2) land use designation:

Table 1. Density/Intensity Limits for Mixed-Use Water Related (MU-W2)

MU-W2	Density/Intensity
Mixed-Use Buildings Total Nonresidential Residential	1.25 maximum FAR 0.35 minimum to 0.5 maximum FAR 0.75 maximum FAR (1 du)
Nonresidential Buildings	0.5 maximum FAR

The General Plan contains objectives, policies, and distributions of land use for development in the City. The following General Plan policies are pertinent to the proposed amendment at 2890 Bay Shore Drive:

1. Policy LU 3.3 - Opportunities for Change

"Provide opportunities for improved development and enhanced environments for residents in the following districts and corridors..."

- *Mariner's Mile: re-use of underperforming properties for retail, visitor-serving, and marine-related uses, integrated with residential Coastal Land Use Plan"*

The subject properties are located to the east of the Mariner's Mile corridor along West Coast Highway and across the street from properties located within the Mariner's Mile sub-area as designated in the land use element of the General Plan. Although the subject properties are not located directly within the Mariner's Mile sub-area, the parcels' orientation and location adjacent to West Coast Highway at the entry of Mariner's Mile contribute to the overall character of the corridor.

The general purpose of the General Plan policy above is to strengthen the viability of commercial uses around the existing commercial centers. The Mariner's Mile corridor has been historically used and is currently developed with commercial and mixed-use structures. The amendment will provide continued use of the ground floor for commercial uses in furtherance of the policy. Approval of the amendment will allow the continuation of the existing mixed-use development and it would not be subject to abatement. Therefore, the near term possibility of creating a vacant building would be avoided. The presence of vacant storefronts has the opposite effect of revitalization.

2. LU 3.5 Coastal-Dependent and Related Businesses

"Design and site new development to avoid impacts to existing coastal-dependent and coastal-related developments. When reviewing proposals for land use changes, give full consideration to the impact on coastal-dependent and coastal related land uses, including not only the proposed change on the subject property, but also the potential to limit existing coastal-dependent and coastal-related land uses on adjacent properties."

The existing commercial businesses located at 2890 Bay Shore Drive include storage units, a marine surveyor's office, and a leasing office for the adjacent Bay Shore Apartments, which includes rental facilities for the boat slips at the adjacent Swales Anchorage Marina. The proposed amendment to Mixed-Use Water Related (MU-W2, 1 du) would provide for the continuation of existing coastal-dependant water related uses, eliminate the existing land use nonconformities, and create opportunities for the development of new water-related uses in close proximity to Newport Harbor.

2890 Bay Shore Drive -Zoning Code Amendment

The MU-W2 zoning district applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor serving commercial and residential dwelling units on the upper floors with a commercial floor area ratio (FAR) of 0.35 to 0.5 and residential density of one unit for every 1,631 to 2,167 square feet of land area (density of 20.1-26.7 units per acre), and residential intensity of 0.75 FAR. The residential intensity for the 2890 Bay Shore Drive would be further limited to one (1) dwelling unit to reflect the existing development. The existing mixed-use development would conform to the standards of the proposed Mixed-Use Water Related (MU-W2) zoning district with the exception of the minimum commercial FAR, which is nonconforming because the existing commercial development is well below the minimum 0.35 FAR requirement. The continued commercial uses would be allowed without abatement. Future development would require conformance with applicable development and parking standards.

Under the existing RM designation, 2890 Bay Shore Drive could be developed with a maximum of nine (9) residential dwelling units. The main purpose of the requested amendment is to maintain the existing mixed-use development as was originally approved on July 15, 1959. The existing dwelling unit development limit would be transferred to the adjacent parcel at 2888 Bay Shore Drive as part of the subject amendments.

2888 and 2890 Bay Shore Drive-Coastal Land Use Plan Amendment

The subject property is located in the coastal zone and therefore, is subject to the applicable goals, objectives, and policies of the Coastal Land Use Plan. This Plan is created to govern the use of land and water in the coastal zone within the City of Newport Beach and is in accordance with the California Coastal Act of 1976. The subject properties have a land use designation of Multiple-Unit Residential (RM-C). The applicant is requesting to change the current land use of 2890 Bay Shore Drive to a Mixed-Use Water Related (MU-W) designation and to change the density of 2888 Bay Shore Drive to Multiple-Unit Residential (RM-D), which reflects the existing density equivalent to approximately 25 du/ac.

1. Coastal Development Policy No. 2.4.1-2

"When appropriate, accommodate coastal-related developments within reasonable proximity to the coastal-dependant uses they support."

The Coastal Act prioritizes land uses, and visitor-serving uses are a higher priority land use than residential uses. The continuation of commercial uses and future redevelopment on the subject property as permitted in the MU-W2 designation will not conflict with the policies of the Coastal Act.

2. Coastal Development Policy No.3.1.1-1

"Protect, and where feasible, expand and enhance public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails."

Map 3-1 of the Local Coastal Program, Coastal Land Use Plan does not identify any specific opportunities for lateral or vertical coastal access at either of the subject properties located within the Bay Shores community (Attachment No. PC 5). The subject property does not contain any sensitive coastal resources as it is presently improved with mixed-use and multi-family residential buildings nor located where public access easements would be required.

Charter Section 423 (Measure S) Analysis

Pursuant to City Charter Section 423 and Council Policy A-18, an analysis must be prepared to establish whether a proposed General Plan amendment (if approved) requires a vote by the electorate. The proposed amendment would be combined with 80 percent of the increases in traffic, dwelling units, and non-residential floor area allowed by previous General Plan amendments (approved within the preceding 10 years) within the same statistical area. The following thresholds are applicable: 100 dwelling units, 100 a.m. peak hour trips, 100 p.m. peak hour trips, or 40,000 square feet of non-residential floor area. If any of the thresholds are exceeded and the City Council approves the requested General Plan Amendments, the amendments would be classified as a "major amendment" and be subject to voter consideration. Approved amendments, other than those approved by the electorate, are tracked for 10 years and factored into the analysis of future amendments as indicated.

The properties, for which the General Plan amendment is proposed is located within Statistical Area H4 of the General Plan Land Use Element, and would result in an increase of 10,019 square feet of allowed non-residential floor area. Based on the trip generation rates contained in the Council Policy A-18 (blended commercial rate), the proposed amendment is forecast to generate an additional 30.1 a.m. peak hour trips and 40.1 p.m. peak hour trips. There would be no total change in the number of dwelling units with the proposed changes to the residential density.

There have been two (2) prior amendments approved within Statistical Area H4 since the 2006 General Plan Update (GP2010-004). The first amendment involved land use changes for the Holiday Inn Express and the Balboa Bay Club from mixed-use designations to the Visitor-Serving Commercial designation and did not include any changes in density or intensity. The second amendment involved the Mariner's Pointe retail shopping center development, which increased the allowable FAR for the project site at 200 West Coast Highway from 0.5 to 0.68.

Table 2, summarizes the changes created by the proposed amendments with the recommended MU-W2 (1 du) and RM (39 du) designations. The table also shows threshold totals for the subject property. As indicated, none of the thresholds specified

by Charter Section 423 would be exceeded, and therefore, a vote would not be required. A more detailed analysis is included as Attachment No. PC 6.

Table 2: Charter Section 423 Analysis Summary Statistical Area H4				
	Increase in Allowed Floor Area	Increase in A.M. Peak Hour Trips	Increase in P.M. Peak Hour Trips	Increase in Allowed Dwelling Units
Proposed GP2011-008 3888 Bay Shore Dr.	0 sq. ft.	4.1	5.0	8
Proposed GP2011-008 3890 Bay Shore Dr.	10,019 sq. ft.	26.0	35.1	-8
Prior Amendments (80%)				
GP2010-004 (PA2010-052)	0 sq. ft.	0	0	0
GP2010-009 (PA2010-114)	2,710 sq ft	8.14	10.84	0
TOTALS	12,729 sq. ft.	38.24	50.94	0
Section 423 Thresholds	40,000 sq. ft.	100	100	100

The proposed GPA does not create any new dwelling units as indicated in the above table, the proposed General Plan amendment does not exceed the non-residential floor area threshold, and the amendment does not exceed the a.m. or p.m. peak hour vehicle trips threshold. Therefore, a vote pursuant to Charter Section 423 would not be required. If the proposed General Plan amendment is approved by City Council, this amendment will become a prior amendment and 80 percent of the increases will be tracked for 10 years.

SB18 Tribal Consultation Guidelines

Pursuant to Section 65352.3 of the California Government Code, a local government is required to contact the appropriate tribes identified by the Native American Heritage Commission (NAHC) each time it considers a proposal to adopt or amend the General Plan. If requested by any tribe, the local government must consult for the purpose of preserving or mitigating impacts to cultural resources. The City received comments from the NAHC indicating that ten (10) tribe contacts should be provided notice regarding the proposed amendment. The appropriate tribe contacts were provided notice on October 27, 2011. Section 65352.3 of the California Government Code requires 90 days prior to Council action to allow tribe contacts to respond to the request to consult unless the tribe contacts mutually agree to a shorter time period.

The amendment properties are located in a geographic area which was significantly modified during the last century in order to alter channels for navigation (Newport Harbor) and form habitable land. The Bay Shores area has previously been subject to significant landform alteration. Due to these factors, the City has contacted the ten (10)

tribe contacts by telephone, email, and standard mail, but to date has not received any responses although the review period remains open. The Planning Commission may recommend the proposed amendment to City Council at this time. However, the City Council may not act on the proposed amendments until the 90-day notice period is concluded. Given that the sites are presently developed and that no development is proposed at this time, staff does not anticipate any conflicts or need for monitoring by the tribes. If any requests for consultation are received from the tribes, they will be forwarded to the City Council for consideration.

ENVIRONMENTAL REVIEW

The proposed amendments are exempt since they do not entail any significant alteration to the subject property and will make the General Plan land use, Coastal Land Use Plan, and Zoning District designations consistent with the present use of the subject property. The site is presently developed and no development is proposed at this time, which is exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).

SUMMARY

The applicant has requested the amendments to allow retention of the existing mixed-use building and apartment community. The buildings were constructed in 1960 and the apartments were authorized by Use Permit No. UP518 and Variance No. 535 that were approved on May 21, 1959, by the Planning Commission. The uses have been in existence for nearly 52 years and abatement at this time seems contrary to the General Plan Policies that promote revitalization of the area. Continuation of these uses and future development consistent with the MU-W2 (1 du) and RM (39 du) designation do not appear to conflict with the General Plan or Coastal Land Use Plan or Coastal Act. Staff does not foresee any adverse environmental impacts with continued use or redevelopment. The approval of the General Plan Amendments to the MU-W2 (1 du) and RM (39 du) designations would not necessitate a vote of the electorate, pursuant to Section 423 of the City Charter.

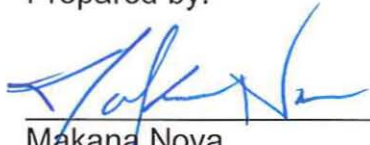
ALTERNATIVES

Alternatives to proposed amendments could include disapproval of the request and retention of the existing General Plan, Coastal Land Use Plan, and Zoning designations of Multiple-Unit Residential. If it is the desire of the Planning Commission to disapprove this request in its entirety, the attached resolution recommending disapproval is provided as Attachment No. PC 2. Such an action would require abatement of the existing nonresidential uses in accordance with the provisions of the Zoning Code, Section 20.38.100.

PUBLIC NOTICE

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the properties, and was posted at the site a minimum of ten (10) days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Makana Nova
Assistant Planner

Submitted by:



Brenda Wisneski
Deputy Community Development Director

ATTACHMENTS

- PC 1 Draft Resolution Recommending Approval with Attached Exhibits
- PC 2 Draft Resolution Denying the Amendment Requests
- PC 3 Relevant Information: 2888 and 2890 Bay Shore Drive
- PC 4 Parcel Map No. 94-115
- PC 5 Map 3-1 of the Local Coastal Program, Coastal Land Use Plan
- PC 6 Section 423 Analysis Table
- PC 7 Site Photos

Attachment No. PC 1

Draft Resolution Recommending Approval
with Attachments

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING APPROVAL TO THE CITY COUNCIL OF AMENDMENTS TO THE LAND USE ELEMENT OF THE GENERAL PLAN, COASTAL LAND USE PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MULTIPLE-UNIT RESIDENTIAL (RM, 39 DU) FOR PROPERTY LOCATED AT 2888 BAY SHORE DRIVE; AND FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MIXED-USE WATER RELATED (MU-W2, 1 DU) FOR PROPERTY LOCATED AT 2890 BAY SHORE DRIVE; (PA2011-179)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On May 21, 1959, the Newport Beach Planning Commission approved Ordinance No. 635 approving Use Permit No. UP518 and Variance No. VA535 for the development of 39 dwelling units with an accessory building, office, and carports at 2888 Bay Shore Drive (Attachment No. PC 3).
2. On July 15, 1959, building permits were issued that authorized the construction of a mixed-use building consisting of an accessory office, apartment, and carports located at 2890 Bay Shore Drive. At that time, the property was in the U (Unclassified) Zoning District.
3. On January 15, 1960, building permits were issued that authorized the construction of 38 dwelling units, carports, laundry, storage, and a semi-public swimming pool for the apartment complex at 2888 Bay Shore Drive.
4. On August 14, 1961, Ordinance No. 969 was adopted by the City Council to change the land use designation of the subject properties from U (Unclassified) to the R-3 (Restricted Multiple Family Residential) Zoning District.
5. On May 29, 1990, the City Council adopted Ordinance No. 90-24, changing the land use of the subject properties from Restricted Multiple Family Residential (R-3) to Multiple-Family Residential (MFR, 2178).
6. On June 30, 1995, Resubdivision No. 1007, which identifies the subject properties as Parcel 1 and 2 of Parcel Map No. 94-115, was recorded (Attachment No. PC 4).
7. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").

8. On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update.
9. On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009, and the subsequent Zoning Code Update which became effective November 25, 2010.
10. On October 25, 2010, the City Council Adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The multiple residential zoning designations of the subject properties were changed from Multiple-Family Residential (MFR, 2178) to Multi-Unit Residential (RM, 2178). Upon the effective date of the Comprehensive Update to the Zoning Code, Ordinance no. 2008-005 became effective. As a result of that action, existing nonconforming commercial uses located within residential districts became subject to abatement in accordance with Ordinance No. 2008-05.
11. An application was filed by property owner Ron E. Presta of Palmo Investments GP, with respect to the subject property located at 2888 and 2890 Bay Shore Drive, requesting approval of amendments to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use.
12. The subject property is currently located within the Multi-Unit Residential (RM, 2178) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential Land Use (RM, 20 du/ac).
13. The recommended change of the General Plan designation of 2888 Bay Shore Drive is from Multiple-Unit Residential (RM, 20 du/ac) to Multiple-Unit Residential (RM, 39 du). The recommended change of the General Plan designation of 2890 Bay Shore Drive is Multiple-Unit Residential (RM, 20 du/ac) to Mixed-Use Water Related (MU-W2, 1 du).
14. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required. If a project (separately or cumulatively with other projects over a 10-year span) exceeds any one of the following thresholds, a vote of the electorate would be required if the City Council approves the suggested General Plan Amendment: the project generates more than 100 peak hour trips (AM or PM), adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area.
15. This is the third General Plan Amendment that affects Statistical Area H4 since the General Plan update in 2006. There is no change in the number of dwelling units and the amendment results in 10,019 additional square feet of non-residential floor area. The additional floor area results in an increase of 30.1 A.M. peak hour trips and an increase 40.1 P.M. peak hour trips based on the commercial and residential housing

trip rates reflected in Council Policy A-18. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required.

16. The recommended change of the Zoning District designation of 2888 Bay Shore Drive is Multi-Unit Residential (RM, 2178) to Multi-Unit Residential (RM, 39 du). The recommended change of the Zoning District designation of 2890 Bay Shore Drive is Multi-Unit Residential (RM, 2178) to Mixed-Use Water Related (MU-W2, 1 du).
17. The subject property is located within the coastal zone. The Coastal Land Use Plan category of the subject properties is Multiple-Unit Residential (RM-C).
18. The recommended change to the Coastal Land Use designation is consistent with the recommended General Plan Amendment for 2888 Bay Shore Drive from Multiple-Unit Residential (RM-C) to Multiple-Unit Residential (RM-D). The recommended change to the Coastal Land Use designation is consistent with the recommended General Plan Amendment for 2890 Bay Shore Drive from Multiple-Unit Residential (RM-C) to Mixed-Use Water Related (MU-W). The CLUP amendments will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
19. A public hearing was held on December 8, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The proposed amendments are exempt since they do not entail alteration to the subject property and are essentially bringing the General Plan land use designations, Coastal Land Use Plan designations and Zoning districts to be consistent with the existing use of the buildings and property involved. Therefore, this activity is not subject to CEQA.
3. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare.
3. The amendments of the Land Use Element of the General Plan and the Coastal Land Use Plan will provide consistency with the proposed Zoning Code amendment to change the density of 2888 Bay Shore Drive to reflect the existing multiple-unit residential development and change 2890 Bay Shore Drive from Multiple-Unit Residential (RM) to Mixed-Use Water Related (MU-W2) to reflect the existing mixed-use development.
4. The existing building and uses, and future development of the property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan; and will be consistent with the purpose and intent of the RM and MU-W2 zoning districts of the Newport Beach Municipal Code.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-008, changing the land use designation from Multiple-Unit Residential (RM, 20 du/ac) to Multiple-Unit Residential (RM, 39 du); Coastal Land Use Plan Amendment LC2011-004 changing the land use designation from Multiple-Unit Residential (RM-C) to Multiple-Unit Residential (RM-D); and Code Amendment No. CA2011-011 changing the Zoning designation from Multiple-Unit Residential (RM, 2178) to Multiple-Unit Residential (RM, 39 du), affecting 2888 Bay Shore Drive, Statistical Area H4, legally described as a portion of Lot 171 in Block 54 and a portion of Block 54 of Irvine's subdivision, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 1, Page 88 of miscellaneous maps, records of Orange County, California.
2. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of General Plan Amendment No. GP2011-008, changing the land use designation from Multiple-Unit Residential (RM, 20 du/ac) to Mixed-Use Water Related (MU-W2, 1 du); Coastal Land Use Plan Amendment LC2011-004 changing the land use designation from Multiple-Unit Residential (RM-C) to Mixed-Use Water Related (MU-W); and Code Amendment No. CA2011-011 changing the Zoning designation from Multiple-Unit Residential (RM, 2178) to Mixed-Use Water Related (MU-W2, 1 du), affecting 2890 Bay Shore Drive, Statistical Area H4, legally described as a portion of

Lot 171 in Block 54 and a portion of Block 54 of Irvine's subdivision, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 1, Page 88 of miscellaneous maps, records of Orange County, California.

3. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Presta Property Amendments (PA2011-179 including, but not limited to, General Plan Amendment No. GP2011-008, Coastal Land Use Plan Amendment No. LC2011-004, and Code Amendment No. CA2011-011. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PASSED, APPROVED AND ADOPTED THIS 8th DAY OF DECEMBER, 2011.

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

BY: _____
_____, Chairman

BY: _____
Bradley Hillgren, Secretary

Attachment No. PC 2

Draft Resolution Denying the Amendment
Requests

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH DENYING THE REQUEST TO AMEND THE LAND USE ELEMENT OF THE GENERAL PLAN, COASTAL LAND USE PLAN AND THE ZONING CODE TO CHANGE THE LAND USE DESIGNATION FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MULTIPLE-UNIT RESIDENTIAL (RM, 39 DU) FOR PROPERTY LOCATED AT 2888 BAY SHORE DRIVE; AND FROM MULTIPLE-UNIT RESIDENTIAL (RM) TO MIXED-USE WATER RELATED (MU-W2, 1 DU) FOR PROPERTY LOCATED AT 2890 BAY SHORE DRIVE; (PA2011-179)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On May 21, 1959, the Newport Beach Planning Commission approved Ordinance No. 635 approving Use Permit No. UP518 and Variance No. VA535 for the development of 39 dwelling units with an accessory building, office, and carports at 2888 Bay Shore Drive (Attachment No. PC 3).
2. On July 15, 1959, building permits were issued that authorized the construction of a mixed-use building consisting of an accessory office, apartment, and carports located at 2890 Bay Shore Drive. At that time, the property was in the U (Unclassified) Zoning District.
3. On January 15, 1960, building permits were issued that authorized the construction of 38 dwelling units, carports, laundry, storage, and a semi-public swimming pool for the apartment complex at 2888 Bay Shore Drive.
4. On August 14, 1961, Ordinance No. 969 was adopted by the City Council to change the land use designation of the subject properties from U (Unclassified) to the R-3 (Restricted Multiple Family Residential) Zoning District.
5. On May 29, 1990, the City Council adopted Ordinance No. 90-24, changing the land use of the subject properties from Restricted Multiple Family Residential (R-3) to Multiple-Family Residential (MFR, 2178).
6. On June 30, 1995, Resubdivision No. 1007, which identifies the subject properties as Parcel 1 and 2 of Parcel Map No. 94-115, was recorded (Attachment No. PC 4).
7. On July 25, 2006, the Newport Beach City Council adopted Resolution No. 2006-76 approving a comprehensive update to the Newport Beach General Plan ("General Plan Update").

8. On November 13, 2007, the City Council adopted Resolution No. 2007-71, approving Coastal Land Use Plan Amendment No. LC2007-001, making the Coastal Land Use Plan consistent with the General Plan Update.
9. On January 28, 2008, the City Council adopted Ordinance No. 2008-05, which in addition to other Zoning Code changes, established the maximum time period for the abatement and termination of nonconforming uses in residential districts. However, determinations of nonconformity could not be made until the finalization of the City's Local Coastal Plan (LCP), which occurred on July 14, 2009, and the subsequent Zoning Code Update which became effective November 25, 2010.
10. On October 25, 2010, the City Council Adopted a Comprehensive Update to the Zoning Code (Newport Beach Municipal Code Title 20) bringing consistency between the Zoning Code and the Land Use Element of the General Plan. The multiple residential zoning designations of the subject properties were changed from Multiple-Family Residential (MFR, 2178) to Multi-Unit Residential (RM, 2178). Upon the effective date of the Comprehensive Update to the Zoning Code, Ordinance no. 2008-005 became effective. As a result of that action, existing nonconforming commercial uses located within residential districts became subject to abatement in accordance with Ordinance No. 2008-05.
11. An application was filed by property owner Ron E. Presta of Palmo Investments GP, with respect to the subject property located at 2888 and 2890 Bay Shore Drive, requesting approval of amendments to the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use.
12. The subject property is currently located within the Multi-Unit Residential (RM 2178) Zoning District and the General Plan Land Use Element category is Multiple-Unit Residential Land Use (RM 20 du/ac).
13. A public hearing was held on December 8, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. FINDINGS.

1. Amendments to the General Plan and Coastal Land Use Plan are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments. The Planning Commission has determined

that in this particular case that the current General Plan and Coastal Land Use Plan designations are appropriate and a change is not warranted.

2. Code amendments are legislative acts. Neither the City Municipal Code nor State Planning Law set forth any required findings for either approval or denial of such amendments, unless they are determined not to be required for the public necessity and convenience and the general welfare. The Planning Commission has determined that in this particular case, that the current Zoning designation is appropriate and that a change is not necessary for the public necessity and convenience and the general welfare.
3. The existing nonresidential uses including a marine surveyor's office, storage unit facility, leasing office, and boat-slip rental facility are not consistent with the goals and policies of the Land Use Element of the General Plan, the Zoning District requirements or the Coastal Land Use Plan; and therefore will be subject to abatement in accordance with Ordinance No. 2008-05.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby denies the requests for General Plan Amendment No. GP2011-008, Coastal Land Use Plan Amendment LC2011-004, and Code Amendment No. CA2011-011, affecting 2888 Bay Shore Drive, Statistical Area H4, legally described as a portion of Lot 171 in Block 54 and a portion of Block 54 of Irvine's subdivision, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 1, Page 88 of miscellaneous maps, records of Orange County, California.
2. The Planning Commission of the City of Newport Beach hereby denies the requests for General Plan Amendment No. GP2011-008, Coastal Land Use Plan Amendment LC2011-004, and Code Amendment No. CA2011-011, affecting 2890 Bay Shore Drive, Statistical Area H4, legally described as a portion of Lot 171 in Block 54 and a portion of Block 54 of Irvine's subdivision, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 1, Page 88 of miscellaneous maps, records of Orange County, California.
3. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 8th DAY OF DECEMBER, 2011.

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

BY: _____, Chairman

BY: Bradley Hillgren, Secretary

Attachment No. PC 3

Relevant Information:

2888 and 2890 Bay Shore Drive

IF GRANTED, NOT EFFECTIVE
UNTIL 15 DAYS AFTER DATE
OF GRANT.

USE PERMIT APPLICATION
ORD. NO. 635 SECT. NO.
CITY OF NEWPORT BEACH

NO. 518

DATE: _____

INSTRUCTIONS: (READ CAREFULLY) THE APPLICANT OR HIS LEGAL REPRESENTATIVE MUST BE PRESENT AT ALL PUBLIC HEARINGS. FILL OUT THIS APPLICATION COMPLETELY. It MUST be accompanied by a plot plan in duplicate drawn to scale, and with correct dimensions, showing in detail all boundaries, existing buildings, proposed alterations and additions. The Applicant must sign the "Use Permit" within thirty (30) days after granting.

1. THE IRVINE CO. & LYMAN H. FARWELL BAYSHORES DRIVE & COAST HWY.
Applicant Address Involved
2. PORTION OF BLOCK 54, IRVINE SUBDIVISION - Book 1, P 88, MISC. MAPS.
LOT BLOCK SECTION TRACT ZONE U

3. HEARING DATE MAY 21, 1959 TIME A.M.
P.M.

4. Application is hereby made for a Use Permit from Section 9103.6 to permit: _____

CONSTRUCTION OF 39 APARTMENT UNITS AND ACCESSORY BUILDINGS AS INDICATED

ON ATTACHED PLOT PLAN

There are 3 sheets attached to and made a part of this Application. I hereby certify that the foregoing statements, maps, drawings, plans and specifications attached hereto are true and correct. If granted this Use Permit will not adversely affect persons residing or working in the neighborhood. I further consent to any permit issued in reliance thereon being null and void in the event they are not true and correct.

Lyman H. Farwell 1124 E. BALBOA BLVD., NEWPORT BEACH CR. 5-0082
Signature of Owner or Applicant Home Address Phone

FOR DEPARTMENTAL USE ONLY

PLANNING COMMISSION ACTION

In accord with Section _____ A Use Permit is hereby granted the above Applicant subject to requirements of all governmental agencies having jurisdiction and subject to the following:

(1) Application approved subject to the use and conditions of an R-3 Zone.

(2) Parking to be in conformance with plot plan submitted with not less than 106 spaces.

The undersigned hereby agrees to all the above conditions.

Lyman H. Farwell
Signature of Grantee

DATES: Filed _____ Hearing _____ Published _____ Newspaper _____

FINDINGS OF PLANNING COMMISSION: It was determined by the Commission that the granting of this use permit would not be detrimental to persons residing or working in the neighborhood and approval was recommended, subject to the above conditions.

Ray Y. Copelin
GRANTED- By City Planning Commission
on the 21 day of May 19 59

Margery Schrouder
DENIED-
GRANTED- By the City Council on the
_____ day of _____ 19 _____

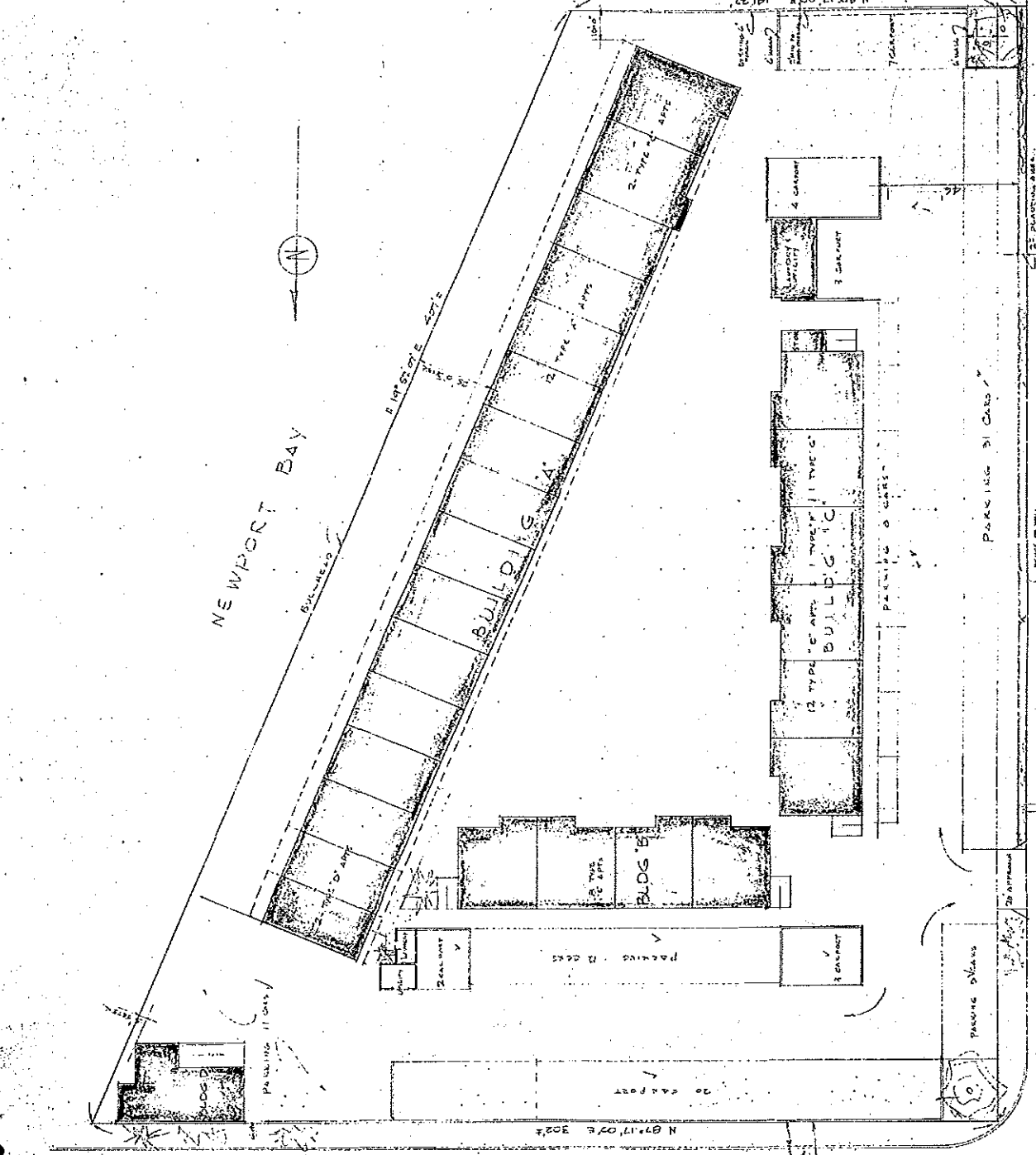
Ray Y. Copelin, Secretary
Newport Beach City Planning Commission

Margery Schrouder, City Clerk
Newport Beach, California

(Use Permit # 518

Use Permit # 535
 0111

FRANKLIN - PARKING



APARTMENT DEVELOPMENT
 LYMAN HEARWELL
 BY HERBERT E RILEY AIA ARCHITECT
 2-20-57

BLDG	TYPE	APTS	SQ FT	TOTAL AREA
BLDG A	10 TYPE 'A' APTS	10	14,000 SQ FT	14,000
BLDG B	12 TYPE 'B' APTS	12	16,800 SQ FT	16,800
BLDG C	14 TYPE 'C' APTS	14	19,600 SQ FT	19,600
BLDG D	16 TYPE 'D' APTS	16	22,400 SQ FT	22,400
BLDG E	18 TYPE 'E' APTS	18	25,200 SQ FT	25,200
BLDG F	20 TYPE 'F' APTS	20	28,000 SQ FT	28,000
TOTAL		90	136,000 SQ FT	136,000

BLDG A: 10 TYPE 'A' APTS, 14,000 SQ FT
 BLDG B: 12 TYPE 'B' APTS, 16,800 SQ FT
 BLDG C: 14 TYPE 'C' APTS, 19,600 SQ FT
 BLDG D: 16 TYPE 'D' APTS, 22,400 SQ FT
 BLDG E: 18 TYPE 'E' APTS, 25,200 SQ FT
 BLDG F: 20 TYPE 'F' APTS, 28,000 SQ FT
 TOTAL: 90 APTS, 136,000 SQ FT

BLDG A: 10 TYPE 'A' APTS, 14,000 SQ FT
 BLDG B: 12 TYPE 'B' APTS, 16,800 SQ FT
 BLDG C: 14 TYPE 'C' APTS, 19,600 SQ FT
 BLDG D: 16 TYPE 'D' APTS, 22,400 SQ FT
 BLDG E: 18 TYPE 'E' APTS, 25,200 SQ FT
 BLDG F: 20 TYPE 'F' APTS, 28,000 SQ FT
 TOTAL: 90 APTS, 136,000 SQ FT

BLDG A: 10 TYPE 'A' APTS, 14,000 SQ FT
 BLDG B: 12 TYPE 'B' APTS, 16,800 SQ FT
 BLDG C: 14 TYPE 'C' APTS, 19,600 SQ FT
 BLDG D: 16 TYPE 'D' APTS, 22,400 SQ FT
 BLDG E: 18 TYPE 'E' APTS, 25,200 SQ FT
 BLDG F: 20 TYPE 'F' APTS, 28,000 SQ FT
 TOTAL: 90 APTS, 136,000 SQ FT

Use Permit # 518
 0111

NO. 53.

DATA

1. LYMAN H. FARWELL & THE IRVINE CO. BAYSHORES DRIVE & COAST HWY.
Property Owner Only Address Involved
PORTION OF BLOCK 54, IRVINE SUBDIVISION - BOOK 1, P 88, MISC. MAPS.
2. LOT _____ BLOCK _____ SECTION _____ TRACT _____ ZONE U
3. DATE OF HEARING MAY 21, 1959 TIME _____ A.M. P.M.
4. Application is hereby made for a Variance from Section 9105.4 to permit:

8' HIGH ACCESSORY BUILDING WALL TO HAVE "0" SETBACK ALONG COAST HWY.

THERE IS NO SETBACK SHOWN ON DISTRICTING MAP #23 FOR THIS PROPERTY.

REQUEST A 5' SETBACK FOR OFFICE BUILDING AS SHOWN ON PLOT PLAN.

5. Hardship Involved: THE REQUIRED 1' SETBACK (#.22, SECTION 9105.4) WOULD NOT

AFFECT THE HIGHWAY, BUT WOULD PERMIT THE OWNER A 1' WIDER DRIVEWAY. IT IS

DESIREABLE TO HAVE A VIEW OF BOATS FROM OFFICE , HENCE THE 5' BETBACK.

There are 1 sheets attached to and made a part of this Application. I hereby certify that the foregoing statements, maps, drawings, plans and specifications attached hereto are true and correct. If granted this Variance will not adversely affect persons residing or working in the neighborhood. I further consent to any permit issued in reliance thereon being null and void in the event they are not true and correct.

x Lynne Y. Linnell 1124 E. BALBOA BLVD., NEWPORT BEACH Or. 5-0082
Signature of Owner Home Address Phone

FOR DEPARTMENTAL USE ONLY

PLANNING COMMISSION ACTION

In accord with Section 9106.31(a)-1-2-3 a Variance is heraby _____ the above application subject to requirements of all governmental agencies having jurisdiction, and subject to the following: (1) Development must comply with fire department specifications as set forth in a communication dated May 21, 1959.

(2) Height of fence along Bayshore Drive must be a minimum of 4' and of masonry construction.

(3) The relocation of the gate approach to Bayshores must be in accordance with the specifications of the City Engineer.

1. undersigned hereby agrees to all the above CONDITIONS.

DATE:	Filed	Hearing	Published	Newspaper
11/1/54				
11/2/54				
11/3/54				
11/4/54				
11/5/54				
11/6/54				
11/7/54				
11/8/54				
11/9/54				
11/10/54				
11/11/54				
11/12/54				
11/13/54				
11/14/54				
11/15/54				
11/16/54				
11/17/54				
11/18/54				
11/19/54				
11/20/54				
11/21/54				
11/22/54				
11/23/54				
11/24/54				
11/25/54				
11/26/54				
11/27/54				
11/28/54				
11/29/54				
11/30/54				
12/1/54				
12/2/54				
12/3/54				
12/4/54				
12/5/54				
12/6/54				
12/7/54				
12/8/54				
12/9/54				
12/10/54				
12/11/54				
12/12/54				
12/13/54				
12/14/54				
12/15/54				
12/16/54				
12/17/54				
12/18/54				
12/19/54				
12/20/54				
12/21/54				
12/22/54				
12/23/54				
12/24/54				
12/25/54				
12/26/54				
12/27/54				
12/28/54				
12/29/54				
12/30/54				
12/31/54				
1/1/55				
1/2/55				
1/3/55				
1/4/55				
1/5/55				
1/6/55				
1/7/55				
1/8/55				
1/9/55				
1/10/55				
1/11/55				
1/12/55				
1/13/55				
1/14/55				
1/15/55				
1/16/55				
1/17/55				
1/18/55				
1/19/55				
1/20/55				
1/21/55				
1/22/55				
1/23/55				
1/24/55				
1/25/55				
1/26/55				
1/27/55				
1/28/55				
1/29/55				
1/30/55				
1/31/55				
2/1/55				
2/2/55				
2/3/55				
2/4/55				
2/5/55				
2/6/55				
2/7/55				
2/8/55				
2/9/55				

FINDINGS OF PLANNING COMMISSION: The Commission found and determined, upon reviewing all the evidence on file and oral testimony at the hearing, that the granting of this variance would not be detrimental to persons residing or working in the neighborhood and recommended approval, subject to the above conditions.

That Variance be GRANTED-~~DEWICK~~
on the 21 day of May 19 59

Ray Y. Copelin, Secretary
Newport Beach City Planning Commission

GRANTED-DENIED
on the day of 19

Margery Schrouder, City Clerk
Newport Beach, California

Clerk
u
V-535

Attachment No. PC 4

Parcel Map No. 94-115

SHEET 1 OF 2 SHEETS
PARCELS - 2
ACREAGE - 2.01 AC.
BLOCK - 5349
MODULE - 15
ALL OF TPM 94-115
DATE OF SURVEY - FEB., 1994

PARCEL MAP NO. 94-115

RESUB. 1007
805491

ACCEPTED AND FILED AT THE
REQUEST OF

CHICAGO TITLE

DATE June 30, 1995

TIME 11:50 AM

INSTRUMENT 95-0280510

BOOK 287 PAGE 11 PM

IN THE CITY OF NEWPORT BEACH,
COUNTY OF ORANGE, STATE OF CALIFORNIA
BEING A RESUBDIVISION OF A PORTION OF LOT 171 IN BLOCK 54 AND A PORTION
OF BLOCK 54 OF IRVINE'S SUBDIVISION, IN THE CITY OF NEWPORT BEACH, COUNTY
OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 1,
PAGE 88 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

SEPTEMBER, 1994 GEORGE A. JURICA R.C.E. 26564

THIS MAP IS FOR FINANCING/CONVEYANCE PURPOSES ONLY

OWNERSHIP CERTIFICATE

WE, THE UNDERSIGNED BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN
THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND
RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE IRVINE COMPANY, A MICHIGAN CORPORATION

William H. McFarlane
WILLIAM H. MCFARLANE
EXECUTIVE VICE-PRESIDENT

James R. Cavanaugh
JAMES R. CAVANAUGH
ASSISTANT SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

ON THIS 27th DAY OF JUNE, 1995, BEFORE ME John H. Simmelink, Notary Public,
PERSONALLY APPEARED William H. McFarlane & James R. Cavanaugh, PERSONALLY
KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE
THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THEIR AUTHORIZED
CAPACITIES, AND THAT BY THEIR SIGNATURES ON THE INSTRUMENT THE PERSONS,
OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE
INSTRUMENT.

WITNESS MY HAND:

Karen H. Simmelink
NOTARY PUBLIC IN AND FOR SAID STATE

MY PRINCIPAL PLACE OF BUSINESS IS IN
Orange County, California.

Karen H. Simmelink
(NAME PRINTED)

MY COMMISSION EXPIRES 10-19-98

ORANGE COUNTY

ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A
FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP
ACT AND LOCAL ORDINANCES AT THE REQUEST OF THE IRVINE COMPANY ON 6/27/94.
I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE
POSITIONS INDICATED OR THAT THEY WILL BE SET IN SUCH POSITIONS ON OR BEFORE
OCTOBER, 1995; AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE
SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY
CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP.

George A. Jurica
GEORGE A. JURICA
R.C.E. 26564
MY REGISTRATION EXPIRES 3-31-95



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE
SUBSTANTIALLY IN CONFORMANCE WITH THE TENTATIVE MAP, IF REQUIRED, AS FILED
WITH, AMENDED AND APPROVED BY THE CITY PLANNING COMMISSION; THAT ALL
PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE
BEEN COMPLIED WITH AND THE MAP IS TECHNICALLY CORRECT IN ALL RESPECTS NOT
CERTIFIED TO BY THE COUNTY SURVEYOR.

DATED THIS 27th DAY OF JUNE, 1995

Donald L. Webb, Jr.
DONALD L. WEBB, JR.
CITY ENGINEER
OF NEWPORT BEACH

Donald L. Webb, Jr.
R.C.E. # 6791
MY REGISTRATION EXPIRES 6/30/97

SIGNATURE OMISSIONS

PURSUANT TO THE PROVISIONS OF SECTION 66436 (c) (3) OF THE SUBDIVISION MAP
ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

1. THE IRVINE COMPANY, A MICHIGAN CORPORATION (NOW THE IRVINE COMPANY,
A MICHIGAN CORPORATION) AS LESSOR AND LYMAN H. FARWELL, CATHERINE S. FARWELL,
LYMAN G. FARWELL, NANCY FARWELL, GURLEY AND BARBARA FARWELL WINKLER AS
LESSEES BY MEMORANDUM OF LEASE RECORDED OCTOBER 7, 1959 IN BOOK 4915,
PAGE 566, OFFICIAL RECORDS.
2. THE COUNTY OF ORANGE, HOLDER OF AN EASEMENT BY DEED RECORDED
MARCH 17, 1964 IN BOOK 8953, PAGE 721, OFFICIAL RECORDS.
3. THE IRVINE COMPANY, A MICHIGAN CORPORATION AS LESSOR AND LYMAN G. FARWELL
AND JANE E. FARWELL, TRUSTEES OF THE L. AND J. FARWELL REVOCABLE TRUST,
DATED APRIL 30, 1990, RICHARD T. WINKLER AND BARBARA F. WINKLER, TRUSTEES
OF THE RICHARD T. AND BARBARA F. WINKLER 1981 TRUST, DATED NOVEMBER 3,
1981 AND ROBERT W. GURLEY AND NANCY F. GURLEY, TRUSTEES OF THE GURLEY
FAMILY 1987 TRUST AS LESSEES, BY GROUND LEASE RECORDED MAY 6, 1992 AS
INSTRUMENT NO. 92-239557, OFFICIAL RECORDS.
4. AN AGREEMENT IN FAVOR OF THE IRVINE COMPANY, A MICHIGAN
CORPORATION AND LYMAN H. FARWELL, CATHERINE S. FARWELL,
LYMAN G. FARWELL, NANCY FARWELL, GURLEY, BARBARA FARWELL,
WINKLER, FOR INGRESS, EGRESS, DISCLOSED BY DOCUMENT RECORDED
AUGUST 14, 1979 IN BOOK 12266 PAGE 1722, O.R.
5. THE STATE OF CALIFORNIA, HOLDER OF AN EASEMENT FOR PUBLIC
UTILITIES AND HIGHWAY PURPOSES BY DOCUMENT RECORDED
JANUARY 7, 1980 IN BOOK 13459 PAGE 1856, ALSO DISCLOSED BY
DOCUMENT RECORDED OCTOBER 17, 1983 AS INSTRUMENT NO.
83-456440 AND BY MAP FILED IN BOOK 11, PAGE 36 OF STATE
HIGHWAY MAPS IN SAID COUNTY OFFICIAL RECORDS.

COUNTY SURVEYOR'S STATEMENT

THIS MAP CONFORMS WITH THE MAPPING PROVISIONS OF THE SUBDIVISION MAP ACT AND
I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

DATED THIS 29th DAY OF JUNE, 1995

Michael Edmunds
JOHN CANAS, COUNTY SURVEYOR

BY MICHAEL EDMUNDS, DEPUTY
LS 5599 EXPIRES: 12-31-96



COUNTY TREASURER - TAX COLLECTOR'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS
AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE,
COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES,
EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET PAYABLE.

AND DO ALSO CERTIFY TO THE RECORDER OF ORANGE COUNTY THAT THE PROVISIONS OF
THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE
THE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND
COVERED BY THIS MAP.

DATED THIS 27th DAY OF JUNE, 1995

John Moorlach
JOHN MOORLACH
COUNTY TREASURER-TAX COLLECTOR

Laurel J. Jorgensen
BY LAUREL J. JORGENSEN
DEPUTY TREASURER-TAX COLLECTOR

IMPROVEMENT CERTIFICATE

PURSUANT TO THE PROVISIONS OF SECTION 66411.1 OF THE SUBDIVISION MAP ACT,
THE FOLLOWING IMPROVEMENTS ARE REQUIRED:

1. NONE

PURPOSE STATEMENT

THE PURPOSE OF THIS MAP IS TO RESUBDIVIDE ONE REMNANT PARCEL INTO TWO PARCELS.

PM 287/11

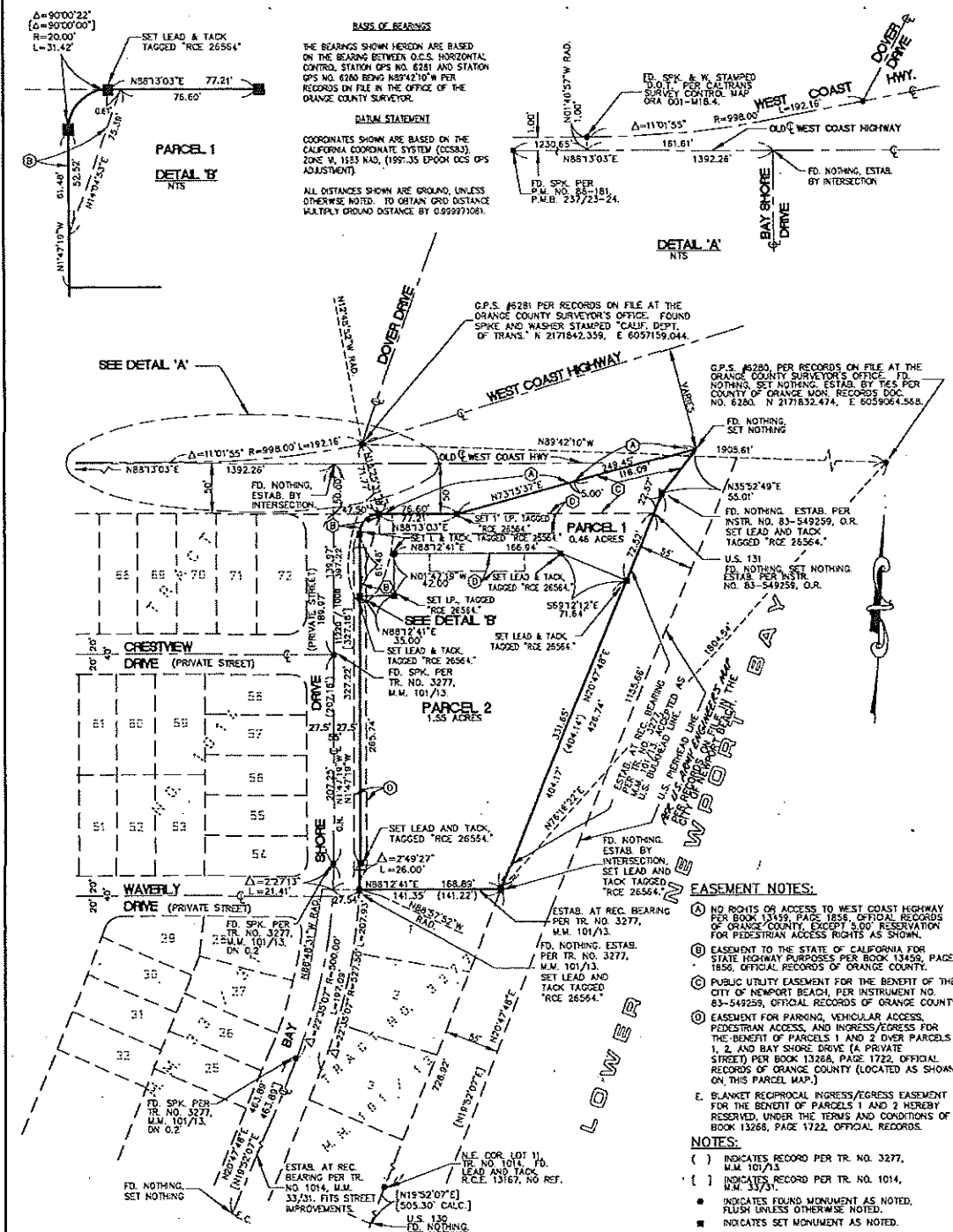
RESUB 1007

287 11

SCALE: 1"=60'

THIS MAP IS FOR FINANCING/CONVEYANCE PURPOSES ONLY

RESULTS 1007



Attachment No. PC 5

Map 3-1 of the Local Coastal Program,
Coastal Land Use Plan

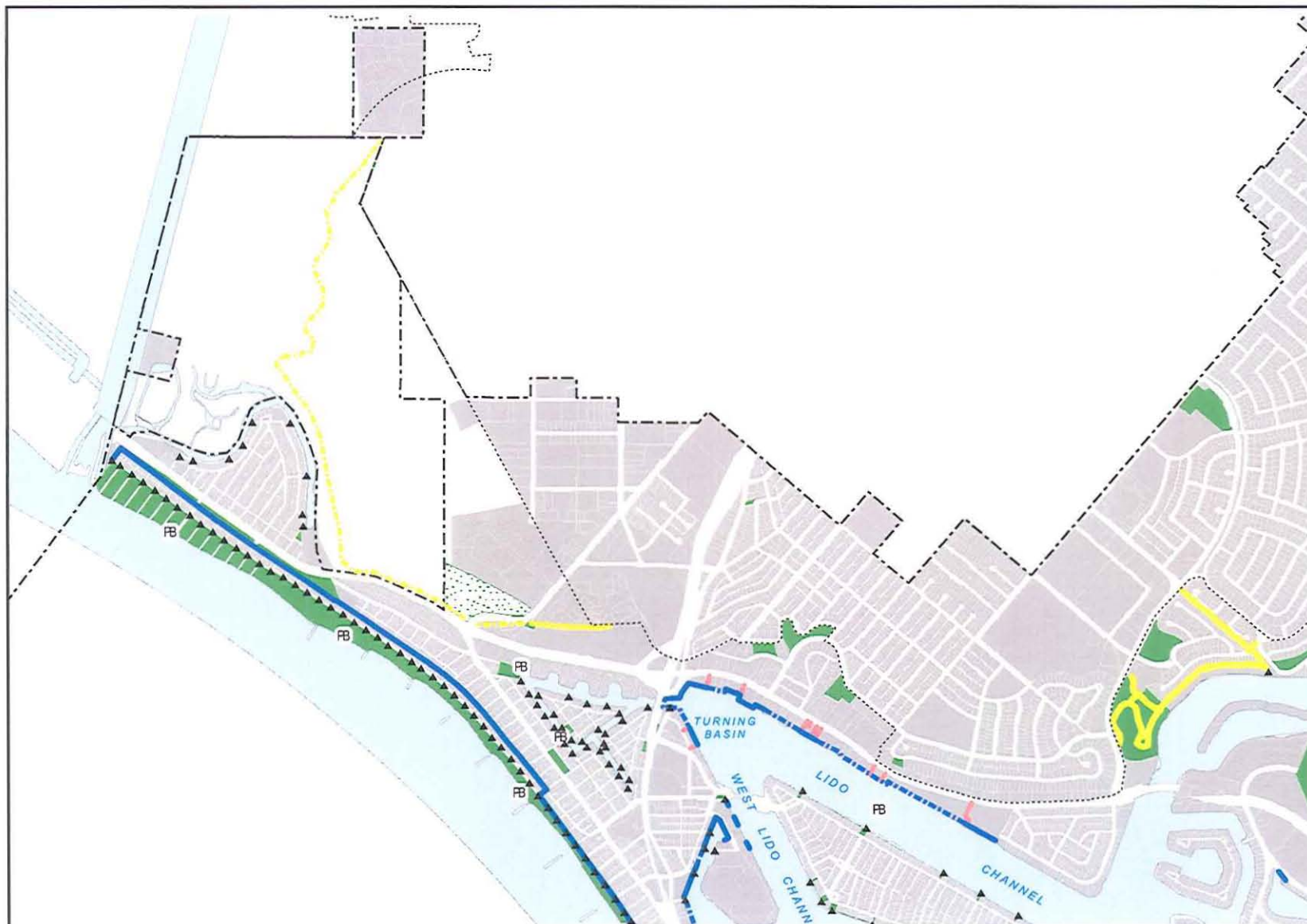
Coastal Access and Recreation:

Map 3-1

(Map 1 of 3)

LEGEND

- PB Public Beach Location
- ▲ Public Beach Access Location
- △ Potential Access Point
- - - Coastal Zone Boundary
- ~ Lateral Access
- ~ Potential Lateral Access
- ~ Vertical Access
- ~ Blufftop Access
- ~ Potential Blufftop Access
- - - City Boundary
- Proposed Park
- Public Beach or Park



City of Newport Beach, California (West Newport Area)



Local Coastal Program
Coastal Land Use Plan

MAP3-1LCP05AccessRecWNpt.mxd



1 Miles

July / 2009

Attachment No. PC 6

Section 423 Analysis Table

[illegible]

Attachment No. PC 7

Site Photos



2888 Bay Shore Drive- Bay Shore Apartments and Surface Parking



2888 Bay Shore Drive-Bay Shore Apartments and Surface Parking



2888 Bay Shore Drive-Carports for Bay Shore Apartments



2888 Bay Shore Drive-Carports for Bay Shore Apartments



2890 Bay Shore Drive-Swales Anchorage Marina



2890 Bay Shore Drive-Commercial Office Tenant Spaces



2890 Bay Shore Drive-Carports for Bay Shore Apartments



2890 Bay Shore Dr-Trash Area and Carports



2890 Bay Shore Drive-Surface Parking Areas



2890 Bay Shore Drive-Surface Parking Area



2890 Bay Shore Drive-Tandem Surface Parking and Storage



2890 Bay Shore Drive-Second Floor Dwelling Unit